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84TH CONGRESS, 1st Session | SENATE | REPORT No. 1203

JOSEPH H. LYM

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Res. 142]

The Committee on the Judiciary, to which was referred the bill (S. 641) for the relief of Joseph H. Lym, doing business as Lym Engineering Co., having considered the same, reports an original resolution (S. Res. 142) referring the bill to the United States Court of Claims under the provisions of section 1492 and 2509 of title 28, United States Code, and recommends that the resolution be adopted.

PURPOSE

The purpose of the proposed legislation is to refer S. 641, a bill for the relief of Joseph H. Lym, doing business as Lym Engineering Co., together with all the accompanying papers to the Court of Claims for findings and facts of conclusions of law sufficient to inform the Congress of the nature and demand of the nature of the claim, legal or equitable, against the United States, and the amount, if any, legally or equitably due the claimant from the United States.

STATEMENT

Claimant was 1 of 2 firms which submitted bids for construction contract in connection with Tucumcari reclamation project in New Mexico.

Claimant's bid was in the amount of $130,041.36, and the only other bid submitted was in the amount of $159,168.20. These bids were opened on February 12, 1945, but the contract was not awarded to the claimant until March 19, 1945, which was within the 60-day period specified in the standard form on which the bid was submitted. Under the terms of the contract, the contractor was required to complete the

job within 100 days following receipt of the notice to proceed, that is, 100 days from April 23, 1945. However, although the completion date was August 1, 1945, the contract was not actually completed until February 6, 1946, or 289 days later. The contractor alleges several reasons for the delay in the completion of the contract, among which is the delay in the awarding of the contract for more than 30 days which necessitated loss by the contractor of the services of skilled supervisors, due to the rules of the War Manpower Commission. Claimant also alleges that contract was not completed within the time prescribed because of the failure of the Government to furnish certain supplies necessary to the completion of the contract. He also claims that he was required to perform additional work not required under the contract.

Claimant at the completion of the work, and in connection with the final payment voucher executed a release on the contract and noted exception for liquidated damages assessed in the sum of $9,450 and a claim for increased costs of operation in the sum of $189,484.95. This exception was considered by the contracting officer who afforded partial relief to the contractor. The contractor then appealed to the agency which determined that he was entitled to partial relief under the War Contracts Hardship Act (the act of August 7, 1946, 60 Stat. 902, as amended). This act, however, permitted relief as far as the claimant was concerned only as to expenses incurred prior to August 15, 1945. Claimant in S. 641 seeks to recover the remainder of the losses incurred by him after August 14, 1945, and the remainder of the damages assessed against him for failure to complete the contract within the time prescribed.

The Department of the Interior in reporting on S. 641 recommends against enactment and raises significant questions, namely, the amount of loss suffered by the claimant after August 14, 1945, whether such loss can be said to have been incurred without fault or negligence on the contractor's part and whether any offsets are chargeable against the amount claimed.

The committee has no desire to deny appropriate relief to a firm which has suffered substantial losses not of its own making in its dealings with the Government. However, in a claim such as this, complex issues of fact and law arise with which the committee, with its limited resources, is ill equipped to deal. The forum best equipped to secure the necessary information upon which the Congress may proceed to act on this claim is the United States Court of Claims, and the committee, therefore, desires to avail itself of the privilege of securing a determination under the provisions of sections 1492 and 2509 of title 28 of the United States Code so that the Congress may be advised, not only of the nature and character of this claim, legal or equitable, but also may be advised concerning the detailed issues of fact raised by the claimant, and the report of the Department of the Interior.

The committee therefore recommends favorable consideration of this resolution.

Attached to this report is the report of the Department of the Interior referred to earlier.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., June 14, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

MY DEAR SENATOR KILGORE: A report has been requested from this Department on S. 641, a bill for the relief of Joseph H. Lym, doing business as Lym Engineering Co.

Section 1 of this bill, if enacted, would direct the Secretary of the Treasury to pay to Joseph H. Lym the sum of $136,885.70 in full satisfaction of his claim against the United States for compensation for losses, after August 14, 1945, arising out of the performance of a contract with the United States (dated March 19, 1945, No. 12r–15304) for the construction of certain reclamation work at Tucumcari, N. Mex.

The contract to which the bill makes reference was for such work as excavating, backfilling, erecting concrete structures, dry-rock paving, pipelaying, and the installation of gates in connection with a number of laterals and sublaterals under construction on the Tucumcari reclamation project, New Mexico. Bids were opened on February 12, 1945. Mr. Lym's bid was in the amount of $130,041.36 and the only other bid in the amount of $159,168.20. Award of the contract was made to the claimant on March 19, 1945, or well within the 60-day period specified in the standard form on which the bid was submitted. Notice to proceed was given on April 23, 1945. By the terms of the contract, this fixed the date for completion of the work as August 1, 1945, or 100 days later. Work was not actually completed until February 6, 1946, or 289 days later. The final gross earnings of the contractor, including those under an extra work order, were $143,600.92. At the completion of the job the contractor reserved a claim in the amount of $9,450 for remission of liquidated damages assessed under the contract for the 189 days of delayed completion and a claim of $189,484.95 for increased costs of operation, a total of $198,934.95.

The sum stated in the bill appears to have been arrived at by deducting from this claim for $198,934.95 made on April 6, 1946, the amount of $62,049.25 which (as will hereafter appear) has been administratively allowed under the War Contracts Hardship Act (act of August 7, 1946 (60 Stat. 902), as amended). The original claim included, however, $9,450 in liquidated damages which the claimant asked to be remitted. Remission has been made in the amount of $4,150, but the voucher for this amount submitted by the contracting officer has not been signed and returned by the contractor. The amount set out in the bill, therefore, appears to be overstated by at least this amount. The remainder of the claim contained in the bill falls in two categories: (*a*) the remaining amount of $5,300 assessed in liquidated damages for nonexcusable delays in completion of the contractor's work; (*b*) the amount of $127,435.70 for "increased costs of operation" after August 14, 1945.

The language of the bill is such as to leave the implication that Mr. Lym believes that "compensation for losses" furnishes the basis for a legitimate claim against the Government. Since full payment has been made to him of the amount called for by the contract and for the extra work order heretofore mentioned and since there is, as far as we are aware, no dispute that completion of the work was delayed beyond the time specified in the contract and that the contract called for assessment of liquidated damages in such circumstances, it seems clear that the claim cannot be and is not based on a failure on the part of the Government to live up to its side of the bargain.

The major part of the claim is, to use the language of Mr. Lym's original claim, for "increased costs of operation." A contractor who successfully bids for a Government contract normally takes the risk of such increased costs unless an escalation clause or some similar protective devices is contained in the contract. Mr. Lym's bid was to do certain work at a certain price, and there is no merit to a claim that he is entitled to more as a matter of law.

The Congress, however, saw fit to enact the War Contracts Hardship Claims Act to permit relief for increased costs in certain instances. The pertinent parts of section 1 of this statute read thus:

"Where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract or subcontract, for any department or agency of the Government which prior to the latter date was authorized to enter into contracts * * * under section 201 of the First War Powers Act, 1941, such departments and agencies are hereby authorized, in accordance with regulations

to be prescribed by the President * * * to consider, adjust, and settle equitable claims of contractors * * * for losses (not including diminution of anticipated profits) incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts * * *."

This Department has already given Mr. Lym all the relief that it can give him under this act—that is, relief of losses incurred prior to August 14, 1945. It appears, however, that he believes that he should be given similar relief for the period after that date. In other words, Mr. Lym is asking, in effect, that the War Contracts Hardship Claims Act be extended for his particular benefit. It is our view that the merits of such an extension should be considered and determined in legislation of a general nature, not in a private bill the impact of which by way of precedent, if it be enacted, cannot be foreseen. We are aware of no circumstances in Mr. Lym's case that would serve to justify the preferential treatment that enactment of this private relief bill would grant him.

But even if it should be determined by your committee that there is merit to granting Mr. Lym the benefit of an extension of the War Contracts Hardship Relief Act, there are several questions that should be answered before S. 641, as presently written, is enacted:

(1) *How much loss did Mr. Lym actually suffer during the period beginning after August 14, 1945?*

This is a matter on which this Department has no information.

(2) *How much of this loss can be said to have been incurred "without fault or negligence" on the part of Mr. Lym?*

The record made before this Department when Mr. Lym took an administrative appeal from the contracting officer's decision justified it in finding that there should be a remission of liquidated damages for 79 days in addition to 4 days on account of the extra work order. (The length of time extension to be allowed was arrived at by comparing the performance of Mr. Lym's organization with that of other contractors in the same area doing the same type of work and using the same type of labor. It was found, in this connection, that Mr. Lym's organization used 140,946 man-hours of labor, exclusive of supervisory and clerical personnel, to do work which other contractors similarly situated would have performed in approximately 90,000 man-hours.) The liquidated-damages provision of the contract called for remission in cases where the cause of delay was "beyond the control and without the fault or negligence of the contractor," a standard substantially the same as that employed in the War Contracts Hardship Claims Act. It was concluded, in other words, that Mr. Lym's firm should be allowed 179 days in which to do the work which the contract called upon to be done in 100 days. If the assumptions be indulged that the contractor's actual cost of performing work called for by the original contract was $319,526.31 (that is, the sum of $130,041.36 stated in the contract, the $62,049.25 already allowed under the War Contracts Hardship Claims Act, and the $127,435.70 for "increased costs of operation") and that he should be made whole to an extent consistent with the finding that the extra 79 days were "beyond the control and without the fault or negligence of the contractor," it could be concluded that Mr. Lym should be given $5,815.37 (that is, the difference between the $192,090.61 which he has already been allowed under the original contract and the War Contracts Hardship Claims Act and one hundred and seventy-nine two hundred and eighty-ninths of the total $319,526.31 claim calculated as above set out). This is considerably less than the amount called for by the bill.

(3) *Were there any offsets which are chargeable against the amount claimed?*

This question, although it is not answerable by this Department, is important if the committee decides to apply to Mr. Lym the standards of the War Contracts Hardship Claims Act. For section 2 of that act directed that the amount of relief granted under its section 1 be reduced to not more than "the amount of the net loss * * * on all contracts and subcontracts held by the claimant under which work, supplies or services were furnished for the Government between September 16, 1940, and August 14, 1945 * * *." It is known that Mr. Lym had other Government contracts prior to August 14, 1945, and that the profits on these contracts served to reduce in some measure the permissible allowance of $62,049.25 for loss which he claimed to have suffered under the Tucumcari contract. We are not informed as to his situation with respect to other Government contracts after August 14, 1945, but quite apart from the question of the merits of the bill as a general proposition, it is our view that it is deficient in that it does not require, consistently with the War Contracts Hardship Claims Act, that account

be taken of any other profits made on Government contracts that the claimant may have had.

Section 2 of the proposed bill provides that the funds appropriated shall be applied by the Secretary of the Treasury, first to meet any Federal liability of Mr. Lym existing on the date of enactment and, second, to payment of claims of materialmen who furnished supplies and materials used in performance of the work. We have no knowledge or record of any unsatisfied third-party claims against Lym Engineering Co. This provision would appear to place on the Secretary of the Treasury the task of identifying these claimants and receiving proof and making payment of the claims found proper. Furthermore, it should be pointed out that bond was furnished with Mr. Lym's contract, as is required by law in connection with all contracts for construction, repair, or improvement of public works, to insure payment of claims of laborers and materialmen. No information is available as to why unpaid claims of materialmen were not presented to the bonding company. The Government having provided materialmen with adequate relief in the form of a payment bond, no reason is seen why relief legislation should be enacted to pay such claims particularly since the cost of furnishing this bond was an indirect charge against the Government presumably reflected in the bid price for performance of the work.

Furthermore, it is not unlikely, in view of the serious losses sustained under this contract, that the bonding company did actually pay some claims. Since the bonding company has a valid claim against the contractor for any claims it may have been required to pay under this bond, it is possible that a portion of the funds proposed to be appropriated might go eventually to payment of such bonding company claims against the Lym Engineering Co. But the very business of a bonding company, in such cases as this one, is to assure the Government that materialmen and laborers of its contractors will be paid and it is for this purpose that the Government requires bonds to be given. It would seem strange, therefore, if the Government, having indirectly paid the bond premium in the first place, were to put itself, by the enactment of this bill, in the position of reimbursing the bonding company for the very losses which it is its business to assure against.

For all of these reasons, it is the recommendation of this Department that S. 641 be not enacted.

There are enclosed, for your committee's information, copies of the contracting officer's original and first and second supplemental findings of fact in the Lym case (dated October 10, 1946, January 9, 1947, and October 29, 1948, respectively) of the departmental administrative decisions (dated September 3, 1948, and October 29, 1951), and of a letter dated July 12, 1951, from the Comptroller General of the United States to this Department.

The Bureau of the Budget has advised that there would be no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., September 3, 1948

LYM ENGINEERING CO., SALT LAKE CITY, UTAH

Appeals from decision of the contracting officer and claim under the act of August 7, 1946, contract No. 12r–15304, Bureau of Reclamation

ADMINISTRATIVE DECISION

* * * * * * *

This decision will dispose of two appeals by the Lym Engineering Co., Salt Lake City, Utah, owned and operated as an individual enterprise by J. H. Lym, from separate findings of fact and decisions by the contracting officer denying additional compensation and assessing liquidated damages. It also will dispose of a claim for relief by Lym Engineering Co. filed under the act of August 7, 1946 (41 U. S. C., 1946 ed., sec. 106, note), from losses allegedly suffered under the same contract.

Pursuant to an award made on March 19, 1945, the parties entered into the contract, No. 12r–15304, items 1 to 14 inclusive, of the schedule of specifications No. 1093, for structures for Bell, Elliott, Roberts, State, Jack County, Liberty,

Young, Coulter, Hurley, and Bend laterals and sublaterals, Bureau of Reclamation Tucumcari project, New Mexico. The contract was on United States Standard Form No. 23. The total amount to be paid to the contractor for the completion of the work at the unit prices that were stated in the schedule was $130,041.36. The work consisted of such items as excavating, backfilling, erecting concrete structures, dry-rock paving, laying pipe of various sizes, and installing gates. The final gross earnings of appellant, including those under an extra work order, totaled $143,600.92.

All work under the contract was to be completed in 100 calendar days, with liquidated damages at the rate of $50 per day to be assessed by the contracting officer for failure to complete the work on time. The appellant received the Government's notice to proceed on April 23, 1945, thus fixing the final date for completing work at August 1, 1945. As matters turned out, all work under the contract was not completed until February 6, 1946, or 189 calendar days late.

On April 3, 1946, in connection with the final payment voucher, the appellant executed a release on contract in which it noted the following exception: "* * * except $9,450 liquidated damages assessed and a claim for increased costs of operation in the sum of $189,484.95, details of which will be submitted."

The several matters presently before the Department will be considered in the following order: (1) the contractor's appeal from the decision of the contracting officer denying it additional compensation; (2) the contractor's appeal from the decision of the contracting officer with respect to the assessment of liquidated damages; and (3) the contractor's claim for an equitable settlement under the act of August 7, 1946.

I

In findings of fact, dated May 31, 1946, the contracting officer decided that the claim for increased costs of operation was not based on any specific provision of the contract and that "inasmuch as payment for all work done under the contract has been made to the contractor at the contract bid prices, the contractor's claim becomes one for unliquidated damages" which an administrative officer of the Government has "no jurisdiction to consider and determine."

Lym Engineering Co. filed a brief appeal from this decision alleging that the Government's delay in accepting the contractor's bid, and its further delay in notifying the contractor to proceed after the bid had been accepted, had caused the contractor to lose its labor force under a regulation of the War Manpower Commission which prevented retention of the men beyond a certain date. The contractor also alleged that it had been unable to recruit suitable labor in the Tucumcari area "for the reason that the entire available labor supply was employed on other Government contracts." The appeal, which is undated but which was received by the Department on June 13, 1946, seeks the issuance of a change order that would increase the total amount to be paid under the contract by $189,484.95.

The contractor's appeal must be regarded either as a request for a modification of the contract or as a claim for damages arising from delays on the part of the Government.

An executed contract may not legally be amended, changed, or modified for the purpose of increasing the amount of the consideration stated therein unless such amendment or modification would result in a benefit to the United States. *Phoenix Horseshoe Company, Inc.* v. *United States*, (59 C. Cls. 234 (1924)). The Government would receive no benefit by modifying the contract after completion of the work. The Department is, therefore, without power to issue such a change order as the contractor requests.

Nor may the Department entertain this appeal as a claim for additional compensation because of damages for delays on the part of the Government. Such a demand is one for unliquidated damages and it is well settled that administrative officers of the United States are without jurisdiction to settle such a claim. *Wm. Cramp & Sons.* v. *United States*, 216 U. S. 494 (1909).

It is my decision, therefore, that the contractor's appeal from the contracting officer's decision of May 31, 1946, must be denied.

II

The contractor received the notice to proceed under the contract on April 23, 1945, and the date for completion of the work was thus fixed as August 1, 1945. The work under the contract was accepted as substantially complete on February 6, 1946. There was, therefore, a delay of 189 days in the completion of the work.

The contracting officer in his findings of fact and decision dated October 10,

1946, held that the time for performance of the work under the contract should be extended 73 calendar days. An extension of 4 days was granted because of the issuance of an extra work order. An extension of 69 days was granted because the contracting officer found that: "* * * completion of the work was delayed 69 calendar days due to a shortage of skilled labor, which was an unforeseeable cause of delay, beyond the control and without the fault or negligence of the contractor. This delay is excusable, therefore, under the provisions of article 9 of the contract." The contracting officer found also that completion of the work was not delayed because of late delivery of several screw-lift gates that the Government, under the terms of the contract, was required to furnish.

The contractor filed an appeal dated November 7, 1946, from the contracting officer's decision of October 10, 1946. It concurred with the findings of the contracting officer that the delay in the completion of the work was due to the unavailability of skilled labor at the site of the construction, but it argued that the formula used by the contracting officer in computing the 69 calendar days was not based on the realities of the labor situation as it existed at the site of the work. The contractor also took issue with the decision of the contracting officer in allowing only 4 days extra time for completing the work after the extra work order was issued. It contended also that the contracting officer was in error in deciding that the late delivery by the Government of the screw gates had not been responsible for delay in the completion of the work.

On January 9, 1947, the contracting officer made a supplemental finding in which he explained in more detail the method he had used in deciding that the time of performance should be extended 69 days. The contractor appealed from this supplemental finding on February 7, 1947.

In a letter to the Bureau of Reclamation dated September 4, 1945, the appellant requested an additional 140 days in order to complete its contract. It stated that on February 12, 1945, the date on which bids were opened, that it had approximately 100 skilled workmen employed on a project for the Chemical Warfare Service at Dugway, Utah. In a subsequent letter dated January 19, 1946, the appellant reduced this number to 60, explaining that the group included carpenters, steelworkers, cement finishers, pipelayers, and equipment operators, who were working on the project at Dugway and on another job for the Public Housing Authority at Guernsey, Wyo. These skilled employees were available for work on the Tucumcari project on February 15, when the Dugway job ended, but, under the appellant's interpretation of the rules of the War Manpower Commission, they could be held for 1 month only.

The appellant alleged that during this month it made several telephone calls to the Bureau in order to learn whether it had been awarded the contract. Not obtaining the desired information, the appellant stated that it released its skilled men on March 15. As the contractor has emphasized many times since, its permanent supervisory force at the time consisted of 1 superintendent and 2 supervisory foremen. It, therefore, intended to use the 60 men on the Dugway job as supervisors of its unskilled laborers who would be recruited locally for the Tucumcari job. These unskilled workers would be scattered over a wide area while constructing some 290 small concrete structures and accordingly required a considerable number of skilled supervisors.

The United States Employment Service at Salt Lake City confirmed the appellant's interpretation of the rules of the War Manpower Commission applicable to the situation at Dugway, Utah. In a letter to the Bureau of Reclamation dated February 21, 1946, responding to the Bureau's inquiry, the acting director of the Employment Service at Salt Lake City wrote that: "The regulations of the War Manpower Commission in effect during the period of time in question would allow an employer to reemploy workers who had been laid off during a period of not to exceed 30 days prior to the date of reemployment * * * [but] it would not have been permissible under the regulations to have reemployed such personnel on March 19, 1945, the date upon which the contract with your agency was awarded without the authorization of the War Manpower Commission and it is doubtful that such authorization would be granted for work on a project carrying no priority in view of the extreme labor shortage in this area at that time."

The State director of the United States Employment Service at Casper, Wyoming, in reply to a similar inquiry from the Bureau of Reclamation, quoted the manager of its Torrington, Wyoming, office, in whose territorial jurisdiction Guernsey is located, as having * * * "no knowledge of the issuance of any regulation which would make it necessary for the contractor to release such skilled men as carpenters, steelworkers, cement finishers, pipelayers and equipment

operators by March 15, 1945." The letter, dated February 25, 1946, concluded with the following paragraph:

"At that time general provisions of the War Manpower Commission encouraged the release of all men whenever they were no longer employed and discouraged the holding of such individuals, but no order was ever issued in Wyoming directed to the Lym Engineering Co. that we have any knowledge of."

There is no question but that the regulations of the War Manpower Commission in effect at the time required the rapid release of his employees just as soon as an employer completed a particular project.[1] There also is no question but that the condition of the appellant as to the supply of its skilled personnel became critical immediately after the release of the 60 potential supervisors on March 15, 1945. The men were gone and it was impossible to replace them in an area remote from essential war work. All skilled labor in the vicinity of the Tucumcari project had been drained off for essential war activity elsewhere. Nevertheless, as soon as the appellant was informed of the award of the contract, it sent out calls for skilled labor to all union offices "as far east as Amarillo, Tex., south to Alamogorda, N. Mex., west to Gallup, N. Mex., and north to Denver, Colo." The skilled employees sent to appellant by the unions proved to be only semi-skilled workers operating on journeymen cards. Also, as shown in a table furnished by the appellant, the turnover of workmen was exceedingly high.

1. An extension of time can be granted to a contractor under article 9 of a Standard Form No. 23 contract only if the causes of the delay are unforeseeable. *United States* v. *Brooks-Callaway* (318 U. S. 120 (1943)).

It is clear that the contractor cannot be granted an extension of time on the ground that his labor difficulties arose because of the regulations of the War Manpower Commission. These regulations were in existence on the date that the bid was submitted and also on the date that the contract became binding on both parties. There is nothing in the record which indicates that these regulations were changed at any time after the contract became operative. (See par. 21 of the specifications.) It is impossible, therefore, to find that the operation of the regulations was an unforeseeable cause of delay within the meaning of article 9 of the contract.

Similarly, the possibility that more than a month might elapse between the opening of bids and an acceptance of one of them patently should have been foreseen. The bid of the Lym Engineering Co. is dated February 12, 1945, and was submitted on Standard Form No. 21. This form states that the bidder—

"* * * agrees, upon receipt of written notice of the acceptance of this bid *within 60 days after the date of opening of the bids* (if no shorter period be specified), that he will * * * execute United States Standard Form of Contract No. 23, in accordance with the bid as accepted * * *." [Emphasis supplied.]

The contractor, however, did not specify a shorter period than 60 days in which the Government would be required to accept its offer. Accordingly, the Government accepted the bid and awarded the contract to the Lym Engineering Co. on March 19, 1945, and mailed the notice of the award to the contractor on that date. The contractor acknowledged receipt of the notice of the award on March 21, 1945, which date was 37 days after the date of the opening of the bids and was well within the 60-day period provided in the contract for acceptance. Therefore, the length of time taken by the Government to accept the bid cannot be the basis for an extension of time.

The record supports the finding of the contracting officer that the completion of the work was delayed due to a shortage of skilled labor which was beyond the control and without the fault or negligence of the contractor. As noted previously, the contracting officer also concluded that the shortage of skilled labor was an "unforeseeable cause" within the meaning of article 9 of the contract and that, accordingly, the time of performance should be extended by 69 calendar days. If this were a matter of first impression, I would be inclined to conclude that the contractor should have foreseen the scarcity of skilled labor that existed in the spring of 1945 in the territory in which the Tucumcari project was located. However, the contracting officer has found, in the light of all the facts and circumstances, that the shortage of skilled labor was an unforeseeable cause within the meaning of article 9 of the contract and the question of foreseeability has not been raised in this appeal.

In paragraph 5 of the contracting officer's supplemental findings of fact and decision dated January 9, 1947, he described the method which he used in arriving

[1] See directives I-VIII of the War Manpower Commission, 7 F. R. 4748 et seq.; Regulation 7 of the War Manpower Commission, 8 F. R. 11338.

at the 69 days. The basic standard is "the records of cost breakdown on other contracts on this project and similar work on other projects." Utilizing this standard, the contracting officer concluded that all work under the Lym Engineering contract should have been completed in 90,000 man-hours, even with the kind of labor available, and not in the 140,986 man-hours which the contractor consumed. The utilization, as a standard, of costs incurred by other contractors who were working on the Tucumcari project at approximately the same time as Lym Engineering Co., appears to be reasonable, and although the contractor attacks it vigorously in his undated supplement to appeal filed with this Department on May 19, 1947, it is my conclusion that the decision of the contracting officer in adjusting the time for performance at an additional 69 days should be affirmed.

2. In its appeal the contractor contends, in effect, that consideration should be given to a marked decrease in the efficiency of labor after V–J Day as a cause of delay in the completion of the work. So far as appears from the record, this matter was not presented to the contracting officer but was raised for the first time on the appeal. Therefore, under article 9 of the contract, it cannot now be considered.

3. The contractor also contends that the contracting officer should have granted an extension of time because of increased work (exclusive of the work covered by extra work order No. 1).

The contractor states that:

"* * * The original contract proposal was for the sum of $130,041.36 based on definite unit price for estimated quantities. However, the estimated quantities proved to be insufficient to complete the project and the actual contract price as based upon the unit price for the quantities actually furnished, not including the extra work called for by order No. 1, amounted to $141,785.92, or an increase of actual quantity over estimated quantity of approximately 9 percent. The contracting officer has made no allowance for increase of time whatsoever because of this increased work. * * *."

It is assumed that this contention is addressed to the finding of the contracting officer (par. 15) that the contractor was entitled to no extension of time for changes made in the dimensions of certain structures pursuant to paragraph 40 of the specifications.

Paragraph 40 of the specifications provides in part that:

"* * * Some of the drawings included in these specifications are typical only of the structures to be constructed and the detail dimensions of the structures as they are to be constructed will be fixed by the contracting officer to adapt the structures to the existing conditions at the structure sites, and the contractor shall be entitled to no additional allowance above the unit prices bid in the schedule by reason of the dimensions fixed by the contracting officer, or by reason of any modifications or extensions. The dimensions of each structure as shown on the drawings, will be subject to such changes as may be found necessary by the contracting officer to adapt the structure to the conditions disclosed by the excavation or to meet other conditions. Where necessary, as determined by the contracting officer, the contractor will be furnished additional detail drawings of the structures to be constructed."

The contracting officer apparently concluded that changes in the dimensions of structures would not justify an extension of time because such changes clearly were contemplated. Paragraph 40 must, however, be read in connection with article 3 of the contract, which authorizes the contracting officer to make changes in the drawings or specifications and provides for an equitable adjustment if such changes cause an increase or decrease in the time required for the performance of the contract.

It seems quite clear to me that, in the absence of a change ordered by the contracting officer, the contractor would have been bound to follow the drawings in building structures. Any change in the dimensions shown by the drawings was therefore a change within the provisions of article 3 (see Larson Construction Co., administrative decision M–34065, April 25, 1947, p. 10). If any such change caused an increase in the time required to perform the work, the contractor is entitled to an extension of time.

Paragraph 15 and subparagraph (f) of paragraph 17 of the findings of the contracting officer, dated October 10, 1946, are set aside, and the contracting officer is instructed to allow an extension of time for any delay in the performance of the work which may have been caused by changes in the dimensions of structures.

4. The contracting officer also granted an extension of 4 days because of the issuance of an extra work order. This order, which is exhibit 5 appended to the

findings of fact of the contracting officer dated October 10, 1946, required the contractor (*a*) to apply one shop coat of paint to each complete gate, (*b*) to construct concrete collars around concrete-pipe joints, (*c*) to cut concrete-pipe sections to form joints for change of grade, and (*d*) to overhaul certain backfill material. The contracting officer found that the work which the contractor was required to perform amounted to 1.4 percent of all the work performed under the contract. Accordingly, he concluded that, "in view of the limited labor supply," the extension of time to be granted to the contractor should be an equivalent percentage of the 289 calendar days required to perform all the work, or 4 days.

As the contractor in its notice of appeal does not allege that the contracting officer was in error in allowing the 4 days, but it only states that the basis for this allowance was an admission by the Government "that 289 calendar days is the length of time reasonably required for the completion of the contract," this finding of fact and decision of the contracting officer must be affirmed.

5. The contracting officer found also that the completion of the work had not been delayed because of the late delivery by the Government of certain screw-lift vertical gates, which it was required to furnish under paragraph 23 of the specifications. The contracting officer stated that the contractor "was ready for installation of the first gate on May 23, 1945, and was ready for installation of the last gate on January 23, 1946." Both contracting officer and contractor agree that all of the gates except 3 were delivered to the contractor on September 25, 1945, and that the remaining 3 gates were delivered to the contractor on February 6, 1946, the date on which the work was accepted by the Government as being substantially complete.

The contractor maintains that "the Government cannot hold the contractor to an earlier date of completion on the contract than the time when the contractor could and did complete the painting and installation of these gates."

Article 9 of the contract, however, provides only that the contractor shall not be "charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including * * * acts of the Government * * *."

No liquidated damages were assessed against the contractor for work done after February 6 on the three gates delivered on that date. In effect, therefore, an extension of time was granted with respect to the work on these gates.

If the delay of the Government in delivering the other gates had in turn delayed the contractor in completing the work under the contract, the contractor would be entitled to an extension of time. But I do not understand the contractor to contend that the work would have been completed at a date earlier than February 6, 1946, even if the gates had been delivered sooner than they were. Therefore, the contracting officer was correct in finding that the completion of the work was not delayed by late delivery of the gates.

III

It now becomes necessary to determine whether the contractor is entitled to any relief under the act of August 7, 1946 (41 U. S. C., 1946 ed., sec. 106, note). This statute provides in part:

"That where work, supplies, or services have been furnished between September 16, 1940, and August 14, 1945, under a contract * * * for any department or agency of the Government which prior to the latter date was authorized to enter into contracts and amendments or modifications of contracts under section 201 of the First War Powers Act, 1941,[2] * * *, such departments and agencies are hereby authorized, in accordance with regulations to be prescribed by the President * * *, to consider, adjust, and settle equitable claims of contractors * * * for losses * * * incurred between September 16, 1940, and August 14, 1945, without fault or negligence on their part in the performance of such contracts * * *."

This statute was intended to carry over for a limited period after the date on which the actual fighting ceased (August 14, 1945) the sanction contained in the First War Powers Act which permitted the President to authorize "any department or agency of the Government exercising functions in connection with the prosecution of the war" to enter into contracts or to amend or modify contracts without regard to the provisions of existing law if the President deemed that such

[2] 50 U. S. C., 1946 ed., sec. 611, The Department of the Interior is in this category. Executive Order No. 9055, February 10, 1942, 3 CFR Cum. Supp., p. 1088; 7 F. R. 964.

amendment or modification "would facilitate the prosecution of the war." [3] It therefore becomes necessary to determine whether the contract of the Government with Lym Engineering Co. was of such a character that relief could have been afforded it under the First War Powers Act if action by the Department to effect such relief had been taken prior to August 14, 1945.

A former Chief Engineer of the Bureau of Reclamation, Walker R. Young, in a memorandum dated September 4, 1947, to the Commissioner, took the position that the Lym Engineering Co. was not "an essential war contractor and therefore that it was not entitled to any relief under the act of August 7, 1946." Mr. Young wrote in part:

"The Bureau of Reclamation in our opinion could not certify that the Lym Engineering Co. was an essential *war contractor*, or that prior to August 14, 1945, the granting of the relief requested by the contractor would have facilitated the prosecution of the war. So far as is known, the contractor had no other war contracts in progress when work was being performed under the subject contract, and it could not be certified that further contracts would probably have been awarded to the contractor. Since the necessary certification to support relief under the First War Powers Act could not be made, it would appear to follow that the contractor is not entitled to relief under Public Law 657 [The act of August 7, 1946]." [Emphasis by the writer of the memorandum.]

This statement by Mr. Young makes necessary some preliminary discussion of the basic question whether operations by the Lym Engineering Co., under its contract were in fact bound up with the war effort before any attention can be directed to the major problem whether it could reasonably be concluded that an amendment of the contract providing for additional compensation, if made prior to August 14, 1945, would have facilitated the prosecution of the war. If the former Chief Engineer is correct, there will be no need to proceed further with the major problem.

The position taken in September 1947 by Mr. Young, which indicates that the Bureau of Reclamation would have been unwilling to certify that Lym Engineering Co. was an essential war contractor, is decidedly at variance with the stand taken by the Bureau at the time when it was pressing the War Production Board for authorization to resume work on the Tucumcari project as an integral part of the war food program.[4]

In a statement dated October 13, 1943, by Mr. Young, as Acting Chief Engineer, to the Commissioner, which accompanied Form WPB–617, "Application for Authority to Begin Construction Pursuant to Order L–41," the following paragraph appears:

"The relation of this project to the war program is in the production of foodstuffs and forage. The principal crops to be produced are alfalfa, grains, and vegetables, while many fruits may be grown in commercial quantities. The lands proposed to be irrigated under this application are now largely devoted to grazing purposes with limited areas cultivated under dry-farming methods. Meat production per acre from grazing is low and returns from dry farming are meager and uncertain. Development of an irrigated area as proposed with certainty of crop production, in a region dependent on other sources for foodstuffs will relieve the demand on the section's food supply and promote health and well being."

This tone permeates the correspondence in the file during the winter and spring of 1943–44. The War Foods Administration, through which the application was cleared, declined on January 26, 1944, to submit it to the War Production Board principally because of the fact that a construction period of 27 months would be required in order to develop the 24,000 acres encompassed by the project.[5] On April 29, 1944, the War Production Board authorized the construction of "irrigation facilities for 45,000 acres of land in the vicinity of Tucumcari, N. Mex." [6] A preference rating AA–3 was assigned to the project by the War Production Board.

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[3] See H. Rept. 2576, 79th Cong., to accompany S. 1477, which became the act of August 7, 1946.

[4] Work on the project had been halted on December 15, 1942, when the War Production Board revoked a preference rating order.

[5] The file does not contain a copy of the recommendation that was finally made to the War Production Board by the War Food Administration. It is referred to in a memorandum dated July 1, 1944, from the Commissioner of Reclamation to the regional director at Amarillo, Tex., in the following manner: "* * * The recommendation made by the War Food Administration to the War Production Board concerning the Tucumcari project was not furnished to the Bureau. An informal inquiry has been made, and we have been advised that a copy of the recommendation is not available. * * *"

[6] This authorization was scheduled to expire on April 1, 1945. On March 13, 1945, 6 days prior to the award of the contract to the Lym Engineering Co., the War Production Board extended the authorization date to March 31, 1946.

Newspapers in the vicinity of the project emphasized its importance to the war food program in their announcement of the resumption of operations. The Amarillo News interviewed Regional Director Nelson and then said in part:

"Suspended by the War Production Board in December 1942, because of a shortage of critical materials and manpower, the program to complete the Tucumcari project had received strong support of the War Food Administration because of its important contribution to the Nation's war food program . . .

"The News learned that Marvin Jones, of Amarillo, head of the War Food Administration, had taken a personal interest in the project in behalf of the Bureau of Reclamation and the citizens of eastern New Mexico. Mr. Jones' interest was founded upon the increased production of food that will be made available to the war effort when the acreage is irrigated and put to intensive use for agricultural purposes."

The following statements in the press release of the Department dated March 31, 1945, which announced the award of the contract to the Lym Engineering Co., indicate how closely the Bureau of Reclamation believed that the work under the contract was bound up with the war effort:

"To irrigate lands for war food production, a contract in the amount of $130,041.36 was awarded to the Lym Engineering Co. of Salt Lake City for construction of 10 laterals and sublaterals on the Tucumcari reclamation project * * *"

* * * * * * *

"Commissioner of Reclamation Harry W. Bashore explained that work on the Tucumcari project authorized in 1938, was halted in 1942 by the War Production Board. In April 1944, the project was approved under the war food program."

It is noteworthy also that a contracting officer under another contract providing for the construction of earthwork and structures on the Tucumcari project [7] emphasized the close relationship of work on the project to the war effort in a letter to that contractor dated November 3, 1944, which reads in part:

"You are perhaps aware of the fact that authorization of resumption of construction work on the project was predicated on the assumption that irrigation water will be delivered to farmland through the Conchas Canal in the spring of 1945 in connection with the WFA program for increasing the production of war food crops. *This fact, therefore, places all work on the project in the category of war work*, and it also explains why we readily become apprehensive because of any apparent delays in the execution of this work." [Italic supplied.]

In the light of the foregoing, I conclude that the Bureau of Reclamation itself decided many months ago that Lym Engineering Co. was "an essential war contractor" and that the contract was in fact closely bound up with the war effort. Accordingly, I shall proceed to a consideration of the major problem, whether it could reasonably be concluded that an amendment to the contract providing for additional compensation, if made prior to August 14, 1945, would have facilitated the prosecution of the war.

Under the provisions of Executive Order No. 9055,[8] which extended Executive Order No. 9001 [9] to the Interior Department, authority is vested in the Secretary of the Interior to enter into agreements modifying or amending or settling claims under contracts whenever in his judgment "the prosecution of the war is thereby facilitated."

There are no standards set out in the regulations incorporated into Executive Order No. 9001 to guide the Secretary in determining under just what conditions the amendment of a contract would facilitate the prosecution of the war. Neither is much assistance to be gained from other sources.[10] However, it would appear to be reasonable to find that an amendment to an existing contract would facilitate the prosecution of the war where a war contractor faces a ruinous financial

[7] The contracting officer was S. O. Harper, who was Mr. Young's immediate predecessor as Chief Engineer of the Bureau of Reclamation. The contract was No. 12r–15095, which was made by the United States with Clyde W. Wood, Inc., North Hollywood, Calif., on August 17, 1944.

[8] 3 CFR Cum. Supp., p. 1088; 7 F. R. 964.

[9] 3 CFR Cum. Supp., p. 1054; 6 F. R. 6787.

[10] In 40 Op. Atty. Gen., No. 53 (1942), the Attorney General advised the Secretary of War as follows: "By Executive Order No. 9001, the President has authorized you, among other things, to make amendments or modifications whenever (in the words of the order) 'in the judgment of the War Department * * * the prosecution of the war is thereby facilitated.' *In my opinion, this requirement of the Executive order is satisfied by a judgment in good faith that the prosecution of the war will be facilitated by a modification or amendment.*" (Italic supplied.) See also H. Rept. 1507, 77th Cong.; Comp. Gen. B–46567 (1945) to the Secretary of the Interior in the claim of Warner Construction Co.; the War Department Regulation (P. R. 1252) quoted in the memorandum to the Commissioner of Reclamation from the Chief Engineer dated September 4, 1947.

situation unless his contract is amended, and it is impossible or infeasible for the Government either to take over the job or to negotiate a new contract.[11]

From the record before me it appears that from the outset of the work no profits were ever earned by the contractor and that by the summer of 1945 the contractor was losing money very rapidly. Also, there is nothing in the record to show that it would have been feasible for the Bureau of Reclamation to have terminated the contract prior to August 14, 1945, under the provisions of article 9 and either to have completed the work itself through the use of force account labor or to have relet the contract.[12] Accordingly, I determine that an amendment to the contract providing for additional compensation for the contractor, if it had been made prior to August 14, 1945, would have facilitated the prosecution of the war.

The next question is whether Lym Engineering Co. filed with this Department a written request for relief on or before August 14, 1945, in conformity with section 3 of the act of August 7, 1946, and the regulations contained in Executive Order No. 9786.[13] In its claim for relief the contractor describes as follows the steps that had been taken in the direction of filing a claim:

"Prior to July 21, 1945, the contractor orally informed the representatives of the contracting officer that it was losing money on the contract and requested an adjustment of the contract price. On July 21, 1945, in a conference with Harold W. Mutch, construction engineer, and Murel M. Starr, assistant construction engineer, the representatives of the United States on the project, the contractor submitted a written statement of the loss suffered to that date on the contract and a claim for adjustment. * * * Pursuant to said claim and at the suggestion of Mr. Bennett, an inspector on the project, Mr. George E. Larson, an inspector of the Bureau of Reclamation, was employed by the contractor to check the progress of the work. On July 26, 1945, Mr. George Larson submitted his report to the contractor, finding that the loss was due to the unavailability of competent supervisory personnel."

A copy of the "written statement of the loss suffered" to July 21, 1945, is attached to the contractor's claim for relief and is marked "Exhibit IV." It shows that during the first 2 months of performance the contractor had expended a total of $109,917.31, of which $62,657.79 had been for labor costs. A chart appended to the contractor's exhibit II shows that by the end of August 1945 the approximate proportional total cost to the contractor of the work performed on the project up to that time was sufficient to absorb the $143,600.92 which it was paid for all work performed under the contract.

The parties appear to be in agreement that Mr. Lym in the written statement that he presented at the conference on July 21, 1945, and in a subsequent letter that he addressed to the Bureau of Reclamation on July 30, 1945, filed a written request for relief with the United States on behalf of Lym Engineering Co.

In an affidavit dated May 8, 1948, at Salt Lake City, Mr. Lym states:

"Prior to July 21, 1945, I had orally informed the representative of the contracting officer that I was losing money on the job and had stated that it was my intention to ask for some relief under the circumstances. On July 21, 1945, in conference with Harold W. Mutch, construction engineer and Murel M. Starr, assistance [sic] construction engineer, which conference was also attended by my engineer Edward Lull and my superintendent, Fred Evans, I presented the breakdown of loss, shown as exhibit 5 [exhibit IV].

"* * * As a result of this conference at my request the Bureau assigned Mr. George E. Larson, an inspector for the Bureau to our job to see if they could determine what was causing the loss. Mr. Larson after 3 days on the job reported in a letter attached [14] to our claim and marked "Exhibit 6" [exhibit V].

[11] See memorandum to the Secretary from Assistant Solicitor Leland O. Graham dated June 16, 1944, in the claim of Warner Construction Co.

[12] At the date when the Bureau of Reclamation advertised for bids on this segment of the operations on the Tucumcari project, only 2 bids were received, although letters had been sent to 8 prospective bidders. The bid of Lym Engineering Co. in the amount of $130,041.36 was $3,624.36 above the engineer's estimate. The other bid totaled $159,168.20. There is no evidence that any other contractor was available to take over the job in the late summer of 1945 if the Lym contract had been terminated or if the Lym Engineering Co. had stopped operations.

[13] 3 CFR, 1946 Supp., p. 165; 11 F. R. 11553. The statute provides in sec. 3 that "Claims for losses * * * shall be limited to losses with respect to which a written request for relief was filed with such department or agency on or before August 14, 1945 * * *." Sec. 202 of the regulations provides: "Each claim shall be in writing and shall contain or shall be accompanied by: * * * e. A copy of each written request filed on or before August 14, 1945, with the war agency concerned, for relief with respect to the losses claimed. f. A copy of any other written request filed prior or subsequent to August 14, 1945, with any agency for relief with respect to the losses claimed. g. A statement of any other relief sought from the Government with respect to the losses claimed."

[14] One paragraph of Mr. Larson's report stated: "In my opinion your supervision is extremely weak and it is my impression to improve it from your personnel here is next to impossible."

"* * * On July 30, 1945, having received the report from Mr. Larson I wrote to Mr. Mutch making claim against the Government for the losses sustained and already set forth in writing to the Bureau under date of July 21, 1945. * * *"

In his letter to Mr. Mutch dated July 30, 1945, Mr. Lym stated in part:

"Because of this impossible situation I am filing a claim for all losses sustained on this project and according to our telephone conversation I am leaving for Denver today to consult with Bureau officials about the procedure necessary for me to follow and will arrive in Tucumcari about the end of the week. * * *"

In response to an inquiry from the Solicitor's Office, Mr. Mutch in a letter dated May 31, 1948, from Poplar, Mont., stated that it was the intention of the parties in attendance at the conference of July 21, 1945, "that the summary of costs * * * was to be incorporated as a part of the contractor's claim to be weighed in the ultimate findings of facts." Mr. Mutch also observed that the chronology of events recited in Mr. Lym's affidavit was correct.

The present Chief Engineer of the Bureau of Reclamation, L. N. McClellan, in response to a request from the Solicitor's Office for his comments on the statements of Messrs. Lym and Mutch, stated in an undated memorandum that was forwarded to the Solicitor by the Acting Assistant Commissioner of Reclamation on July 8, 1948:

"It is my view that the statement entitled 'Tucumcari Summary of Costs,' dated July 21, 1945, submitted by the contractor to Mr. Mutch, who was the Bureau's construction engineer on the Tucumcari project, together with the contractor's letter of July 30, 1945, in which Mr. Lym states, 'I am filing a claim for all losses sustained on this project,' taken together can reasonably be considered as a 'written request for relief' within the meaning of section 3 of the War Contract Hardship Claims Act of August 7, 1946 * * *."

In the light of the foregoing, I conclude that the contractor filed with this Department a written request for relief with respect to the present claim before August 14, 1945.

One other point raised by the former Chief Engineer in his memorandum to the Commissioner of Reclamation dated September 4, 1947, requires some discussion. The Chief Engineer stated:

"In addition, Public Law 657 [the act of August 7, 1946] stipulates that contractors are entitled to relief only for losses incurred 'without fault or negligence on their part.' In my opinion, it cannot be certified that the losses of the Lym Engineering Co. were without fault or negligence on the part of the firm."

While there is evidence that the progress of the work suffered because of poor supervision and a dearth of efficient labor, it by no means follows that these difficulties resulted from the fault or negligence of the contractor.[18] There is a wide difference between the exercise of poor business judgment and negligent conduct.[19] At the time when the contractor submitted its bid it had a supervisory force sufficient to enable it to perform the contract within the time stated in the specifications. The Bureau of Reclamation delayed the acceptance of the bid until after the War Production Board, on March 13, 1945, extended the time from April 1, 1945, to March 31, 1946, in which the Tucumcari project might be completed as a war food project. In delaying acceptance of the bid, as it clearly was permitted to do under the terms stated in the bid, the Bureau of Reclamation made the contractor vulnerable to the regulations of the War Manpower Commission. Once these regulations became operative and the contractor had dismissed his supervisory force, his labor costs mounted to ever-increasing heights. A contractor more experienced in doing business with the United States might have specified in his bid a shorter period than 60 days as the time within which the Government might accept it. Yet this omission was an error in business judgment. It did not fall into the category of a negligent act such as would bar the claimant from relief under the act of August 7, 1946.

[18] The contracting officer in his decision of October 10, 1946, stated in paragraph 17 (d): "It is found that completion of the work was delayed 69 calendar days due to a shortage of skilled labor, which was an unforseeable cause of delay, beyond the control and without the fault or negligence of the contractor."

[19] The best illustrations of this rule will be found in those decisions which concern the legal responsibility of corporate directors for their acts. In most jurisdictions ordinary care or reasonable diligence is the test. *Chicago Title & Trust Co.* v. *Munday*, 297 Ill. 555, 131 N. E. 103 (1921); *Fell* v. *Pitts*, 263 Pa. 314, 106 Atl. 574 (1919); *Brown* v. *Ramsdell*, 227 App. Div. 224, 237 N. Y. Supp. 573 (1929). Accordingly, "It is too well settled to admit of controversy that ordinarily neither the directors nor the other officers of a corporation are liable for mere mistakes or errors of judgment, either of law or fact * * * when they act without corrupt motive and in good faith, that is for mistakes which may properly be classified under the head of honest mistakes." 3 Fletcher, Cyclopedia of the Law of Private Corporations, sec. 1039 (1947), citing among scores of decisions in support of this conclusion: *Briggs* v. *Spaulding*, 141 U. S. 132 (1891); *Bentley* v. *Colgate* 10 N. J. Misc. 1222, 163 Atl. 98 (1932); *Orlando Orange Groves Co.* v. *Hale* 119 Fla. 159, 161 So. 284 (1935).

IV

Although I have decided for the foregoing reasons that the contractor is entitled to an equitable settlement, it should be pointed out that this settlement must necessarily cover a period of slightly less than the first 4 months of the contractor's operations.

Irrespective of the merits of the contractor's claim, I am precluded by the terms of the statute itself from considering any request for relief for losses in connection with work, supplies, or services which were furnished by the contractor subsequent to August 14, 1945.[17] Therefore, the Bureau of Reclamation should apply the formula submitted by former Chief Engineer Young in paragraph 10 of his memorandum of September 4, 1947, to the Commissioner in order to determine the cost of performance to the contractor from the date when it started work through August 14, 1945. This formula, under which it is proposed to pay the contractor, in addition to the amount it earned under the contract, its direct costs computed in a manner described by the former chief engineer plus a "properly allocable proportion of indirect costs," is in harmony with the method of computation established by section 101.7 of the regulations.

V

Therefore, in accordance with the provisions of the act of August 7, 1946, and the regulations issued thereunder:

1. I determine that—

(*a*) The claim of Lym Engineering Co. for losses occurring through August 14, 1945, is for losses incurred within the statutory period;

(*b*) The claim is in writing, it conforms to the requirements set forth in paragraph 202 of the regulations, and it was filed with the Department of the Interior before February 7, 1947;

(*c*) The claim is equitable under all the circumstances and is for losses incurred without fault or negligence on the part of the claimant;

(*d*) A written request for relief with respect to such losses was filed by the claimant with the Department of the Interior before August 14, 1945; and

(*e*) Relief from such losses would have been granted under the First War Power Act, 1941, if final action with respect thereto had been taken by the Department of the Interior on or before August 14, 1945.

2. I direct the Bureau of Reclamation to determine, in conformity with the views expressed in this decision, the amount which would constitute an equitable settlement of the losses sustained by the claimant.

WILLIAM E. WARNE,
Assistant Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., October 17, 1951.

LYM ENGINEERING CO.

Claim under the act of August 7, 1946, Contract No. I2r–15304, Bureau of Reclamation

ADMINISTRATIVE DECISION

On September 3, 1948, the Department determined, among other things, in administrative decision M–34609 that the Lym Engineering Co., Salt Lake City, Utah, had properly presented a claim for relief under the act of August 7, 1946 (41 U. S. C., 1946 ed., sec. 106, note), for losses sustained under contract No. I2r–15304, specifications No. 1093, with the Bureau of Reclamation, and the Bureau was directed to determine "the amount which would constitute an equitable settlement of the losses sustained by the claimant." The contract in question covered construction work on the Tucumcari project of the Bureau of Reclamation in New Mexico.

In accordance with this direction, the Comptroller of the Bureau of Reclamation undertook certain audit investigations of the records of the Lym Engineering Co. As the contractor had kept adequate records covering the Tucumcari contract, the auditors determined that it had suffered a net loss of $62,049.25 during the

[17] Sec. 101.4 of the regulations provides that "The term 'statutory period' means the period September 16, 1940, to August 14, 1945, inclusive."

statutory period, which ended on August 14, 1945. The record contains a report sustaining the conclusion of the auditors.

However, the act of August 7, 1946, provides that the amount which may be paid to a claimant shall not be "in excess of the amount of the net loss * * * on all contracts and subcontracts held by the claimant under which work, supplies, or services were furnished for the Government between September 16, 1940, and August 14, 1945 * * *." Accordingly, as Lym Engineering Co. had other contracts with the War Department and the Federal Public Housing Authority during the statutory period, the claimant was requested to furnish evidence of any profits that it had made or any losses that it had sustained under these latter contracts. In an amended affidavit dated May 11, 1951, the claimant stated that its net loss on all Government contracts performed during the statutory period was $47,968.32. This amount was fixed by the contractor after auditors of the Bureau of Reclamation had made as accurate a test check as was possible in view of the inadequate records kept by the contractor covering the War Department and Federal public housing contracts.

On June 25, 1951, the entire file was submitted to the Comptroller General with a statement that "it would be the intention of the Department to pay the aggregate net loss of $47,968.32 unless you interpose an objection."

In a decision, B–63597, dated July 12, 1951, the Acting Comptroller General stated that "it is clearly apparent that the amount allowable to the contractor, as a fair and equitable settlement of his claim, is for determination by your Department and is not a matter properly for consideration by this Office."

The record covering this claim, which has been in the Department since November 1946, shows (1) that the Lym Engineering Co. suffered a net loss of $62,049.25 during the statutory period under its contract No. 12r–15304 with the Bureau of Reclamation; (2) that the Lym Engineering Co. states under oath that its aggregate net loss during the statutory period was in the amount of $47,968.32; and (3) that, in the opinion of the auditors of the Bureau of Reclamation, it is doubtful whether the making of an additional audit on a vastly broadened scale would produce results "more conclusive than those already attained."

Therefore, in the light of the entire record, it is my decision that the amount stated by the Lym Engineering Co. should be accepted as correct, and that a payment to Lym Engineering Co. in the amount of $47,968.32 would constitute an equitable settlement of the claim in question, and I direct that this amount be paid to the claimant, subject to the availability of funds for such purpose.

MASTIN G. WHITE,
Acting Assistant Secretary of the Interior.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, July 12, 1951.

The honorable the SECRETARY OF THE INTERIOR.

MY DEAR MR. SECRETARY: Reference is made to a letter dated June 25, 1951, with enclosures, from the Assistant Secretary of the Interior, requesting the views of this Office with respect to the settlement of a claim for $62,049.25, filed with your Department by J. H. Lym, an individual trading as Lym Engineering Co., under the act of August 7, 1946, popularly referred to as the Lucas Act (60 Stat. 902), for losses alleged to have been sustained in connection with the performance of contract No. I2r–15304, dated March 19, 1945.

Under the terms of the contract referred to and in consideration of the sum of $130,041.36, the contractor agreed to furnish the materials and perform the work necessary for the completion of structures for laterals and sublaterals for the Tucumcari project, Tucumcari, N. Mex., in strict accordance with the specifications, schedules, and drawings which were made a part of the contract.

In the letter of June 25, 1951, it is stated that the contractor, without fault on his part and largely as a result of conditions beyond the control of the contracting parties, sustained a loss under contract No. 12r–15304 and that he filed a claim therefor in the sum of $189,484.95, which amount has since been reduced to $62,049.25. By administrative decision No. M–34609, dated September 3, 1948, the Assistant Secretary of the Interior held that under the act of August 7, 1946, the contractor is entitled to an equitable settlement for losses sustained under said contract and, accordingly, the Bureau of Reclamation was instructed in the decision to ascertain by accounting examination the amount which would constitute an equitable settlement of such losses. On the basis of a special investigation performed by the Comptroller of the Bureau, the amount of $62,049.25—representing the difference between the contractor's cost of performance and his total accrued earnings through August 15, 1945, the closing date of the statutory

period—was recommended "for consideration in arriving at an equitable settlement" and said amount was accepted by the contractor as correct.

It appears that in addition to the contract referred to above, the contractor had other contracts with the War Department and the Federal Public Housing Authority during the period September 16, 1940, to August 15, 1945, and that to support the combined profit or loss on all Government contracts within the statutory period, he filed an affidavit wherein the profit or loss factors attributable to each Government contract of the Lym Engineering Co. and of the Lym-Horman Construction Co. (in which the contractor was an equal partner) were set forth. It is stated that the original affidavit contained a number of patent errors and the contractor was requested to eliminate the discrepancies before the affidavit would be accepted. Accordingly, he filed an amended affidavit.

Executive Order No. 9786, setting forth the regulations governing the application of the provisions of the act of August 7, 1946, provides in section 306 that "A war agency considering a claim shall determine the extent to which information and data sworn to and filed by the claimant shall be verified." It is stated in the letter of June 25, 1951, that, in the exercise of this authority, the Department of the Interior administratively decided that an exhaustive examination of the many contract operations involved in the computation of the contractor's aggregate net loss on all Government contracts would be impracticable, both from the standpoint of administrative cost and the inconclusiveness which would attach to such an examination because of known weaknesses in the contractor's accounting practices; that in view thereof, a very limited test check of the attested losses as they related to contracts other than contract No. 12R–15304 was performed; and that, on the basis of this undetailed test check, the affidavit of the claimant has been further amended and now states an aggregate net loss of $47,968.32. Also, it is stated in said letter that the Department is satisfied that the sum of $62,049.25, determined by audit as a loss attributable to the Tucumcari contract within the statutory period, is supported by adequate audit disclosure; that while no such conclusive determination has been undertaken with respect to the profit and loss on all Government contracts in which the contractor had an interest, the Department is "generally satisfied" that the amounts presented in the affidavits are as accurate as the contractor can make them; and that under the circumstances, "it would be the intention of the Department to pay the aggregate net loss of $47,968.32" unless this Office interposes an objection thereto.

The act of August 7, 1946, and the regulations issued pursuant thereto, as contained in Executive Order No. 9786, dated October 5, 1946 (11 F. R. 11553), expressly provide that any claim submitted thereunder is for consideration, adjustment and settlement by the department or agency concerned. The act places no responsibility or authority in this Office with respect to the settlement of such claims and the only duties required by this Office in connection therewith are prescribed in section 301 of the said Executive order, as follows: (*a*) to verify and advise war agencies as to discrepancies in lists of contracts and subcontracts set forth in copies of claims and to furnish any facts in its files pertinent to the consideration and settlement of the claims; (*b*) to advise each war agency which shall have notified this Office of a proposed settlement of any claims against the claimants by all contracting and lending agencies of the Government; and (*c*) to furnish as soon as practicable after February 7, 1947, to each contracting or lending agency of the Government and the Department of Justice a list of all claimants under the act. In view thereof, it is clearly apparent that the amount allowable to the contractor, as a fair and equitable settlement of his claim, is for determination by your Department and is not a matter properly for consideration by this Office.

However, with respect to the statements contained in the letter of June 25, 1951, that "a very limited test check of the attested losses as they related to contracts other than the contract with the Department was performed" and that no such "conclusive determination has been undertaken with respect to the profit and loss on all other Government contracts in which the claimant had an interest," your attention is invited to 28 Comptroller General 97, in which it was held that, under the terms of section 2 of the act of August 7, 1946, and section 305 of Executive Order No. 9786, consideration is required to be given by the respective departments and agencies of the Government to the "net loss" incurred under all contracts and subcontracts held by a claimant during the period involved in determining the amount allowable under the act. Also, it seems necessary to consider that in the case of claims presented under the Lucas Act, as in the case of other claims against the United States, the burden is not

on the Government to refute such claims or the allegations on which they are based but, on the contrary, the burden is on claimants to prove their claims and all matters incidental thereto requisite to establish the clear liability of the United States and the claimant's right to the allowance thereof.

The documents and papers submitted with the letter of June 25, 1951, are returned herewith.

Sincerely yours,

FRANK R. YATES,
Acting Comptroller General of the United States.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

TUCUMCARI PROJECT, NEW MEXICO

In the matter of delay in completion of contract dated March 19, 1945 (symbol No. I2r–15304), between the United States and Lym Engineering Co., for construction of structures for Bell, Elliott, Roberts, State, Jack County, Liberty, Young, Coulter, Hurley, and Bend laterals and sublaterals, Tucumcari project, New Mexico

SUPPLEMENTAL FINDINGS OF FACT BY THE CONTRACTING OFFICER

STATEMENT OF FACTS

1. On March 19, 1945, the United States (hereinafter called the Government) and J. H. Lym, an individual trading as Lym Engineering Co. (hereinafter called the contractor), entered into a contract (symbol No. I2r–15304), under items 1 to 14, inclusive, of the schedule of specifications No. 1093, for structures for Bell, Elliott, Roberts, State, Jack County, Liberty, Young, Coulter, Hurley, and Bend laterals and sublaterals, Tucumcari project, New Mexico.

2. To supplement the findings of fact by the contracting officer, dated October 10, 1946, the following facts and information are submitted to show the method of analysis used in arriving at the figure of 90,000 man-hours considered to be a sufficient amount of labor reasonably necessary for completion of all work under the contract, as discussed in paragraph 13 of the above-mentioned findings.

3. In determining the extent of delays due to labor conditions which would be excusable under the provisions of the contract, an analysis of the contractor's bid has been made in the light of labor conditions as they existed at the time the contractor's bid was formulated and the possibility of any changes in these conditions which were reasonably foreseeable at that time. At the time bids were taken for this work, the unsatisfactory labor conditions caused by a state of war were prevalent generally and their existence was a fact known to all concerned. At the time the contractor submitted its bid, construction under four other contracts was already in progress on this project, a fact which served as additional notice to the contractor that labor conditions in this sparsely settled area would be critical and would require a highly efficient group of supervisory personnel to efficiently utilize the type of labor available. The supervisory personnel here referred to, consists of superintendent and foremen which are a permanent part of a contractor's organization and not skilled or semiskilled labor normally recruited in the vicinity of the work. Because these conditions were very evident and because the contractor was familiar with the conditions and had considerable experience it must be assumed that the contractor considered these obvious conditions in formulating its bid.

4. It is found that the unit prices offered in the contractor's bid were within prevailing price ranges as compared to an average bid for similar types of work, and the contractor's bid total of $130,041.36 was slightly above the engineer's estimate and approximately 18 percent below the only other bidder. The contract was mainly one for furnishing labor and equipment as all materials which became a part of the completed work were furnished by the Government. The work consisted of 14 bid items necessary for the installation of concrete structures on laterals and sublaterals and lent itself very well to the organization of work by a number of separate crews performing repeated operations which could be closely supervised.

5. From records of cost breakdown on other contracts on this project and similar work on other projects, it is found that on a percentage basis, construction costs under a contract for this type of work may be apportioned approximately as follows:

(*a*) Materials, 10 percent.
(*b*) Equipment rental, 12 percent.
(*c*) Social security, payroll taxes, and compensation insurance, 3 percent.

(*d*) Overhead and profit, 12 percent.
(*e*) Labor, 63 percent.

An adjustment in the percentages for the items of labor and equipment has been made for this contract, inasmuch as the item of equipment rental averages 35 percent where heavy excavating equipment is used thus reducing labor costs under such contracts to approximately 40 percent. On this contract, equipment consisted mainly of light excavating and dirt-moving equipment and concrete mixers, a larger portion of the work being done by hand labor. On the basis of the actual gross earnings of $141,785.92, exclusive of extra work, a total of $89,325.13, or 63 percent would represent the total labor costs. Apportioning this amount to the various items of work at the applicable specification wage rates gives a total of slightly under 90,000 man-hours as compared to what appears to be an exorbitant amount of 140,986 man-hours utilized as shown in the records submitted by the contractor.

DECISION OF THE CONTRACTING OFFICER

6. Accordingly, confirming the conclusions of findings of fact dated October 10, 1946, it is found that a total of 69 calendar days' delay resulting from a shortage of labor is excusable under the provisions of article 9 of the contract.

7. A copy of these findings of fact will be transmitted to the contractor for its information with attention being invited to the right of appeal to the Secretary of the Interior, as provided in article 9 of the contract. The appeal, if made from the findings of fact dated October 10, 1946, as supplemented by these findings, should be filed in this office within 30 calendar days from the date hereof, for transmittal to the Secretary of the Interior.

Dated at Denver, Colo., this 9th day of January 1947.

(Signed) RALPH LOWRY,
Contracting Officer.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

TUCUMCARI PROJECT

In the matter of delay in completion of contract dated March 19, 1945 (symbol No. I2r–15304), between the United States and Lym Engineering Co., for construction of structures for Bell, Ellcott, Roberts, State, Jack County, Liberty, Young, Coulter, Hurley, and Bend laterals and sublaterals, specifications No. 1093, Tucumcari project, New Mexico

SECOND SUPPLEMENTAL FINDINGS OF FACT BY THE CONTRACTING OFFICER

1. On March 19, 1945, the United States and Lym Engineering Co. entered into the above captioned contract.

2. The contractor received notice to proceed on April 23, 1945, thus the final date for completion (100-calendar-day period) was established as August 1, 1945. All work under the contract was completed on February 6, 1946, thereby involving a delay in completion of 189 calendar days.

3. By findings of fact dated October 10, 1946, the contracting officer considered the delays to the work and extended the time for completion 73 calendar days. The contractor objected to these findings and requested additional information on the method of computation of the excusable delays. On January 9, 1947, the contracting officer issued supplemental findings of fact directed to the computation of the excusable delay. The contractor appealed from both of these findings to the Secretary of the Interior.

4. On September 3, 1948, the Assistant Secretary of the Interior rendered an administrative decision on the contractor's appeals from the contracting officer's findings of facts. The decision of the Assistant Secretary affirmed the decision of the contracting officer in regard to the 73 calendar days' delay found to be excusable. However, the contracting officer was directed to allow an extension of time for any delay in performance of the work which may have been caused by changes in the dimensions of structures.

5. During the progress of the work it was found necessary to change the design of some of the wing walls and footings. In cases where the structures were built in a fill section, it was necessary to lengthen the wing walls from the minimum measurement shown on the drawings. In the cases of the wing walls for drops, weirs, and chutes in fill sections, the walls were made rectangular rather than trapezoidal as shown on the drawings. Where structures were in a cut section,

the wing walls were extended into firm material in the bank, disregarding the minimum dimensions specified on the drawings. A few other minor changes in design of individual structures were also made. The above-described changes in the designs of the structures required the placing of 80 cubic yards of concrete more than would have been required by the original plans. Since the construction of the structures was the controlling item that determined the completion date of the work under the contract, the requirement for placing 80 cubic yards of additional concrete delayed the completion of the work under the contract. This 80 cubic yards of concrete was no more difficult to form or place than the concrete originally required by the specifications. A total of 2,362.7 cubic yards of concrete was required to be placed under the contract. Of this amount, 80 cubic yards were required by design changes. Accordingly, it is found that the requirement for placing additional concrete delayed the completion of the work under the contract 10 calendar days. $\left(\frac{80}{2362.7}\times 289=10\right)$ This delay was due to changes in plans and was an unforeseeable cause of delay beyond the control and without the fault or negligence of the contractor, and is excusable, therefore, under the provisions of article 9 of the contract.

6. In accordance with the provisions of article 9 of the contract (United States Standard Form No. 23, revised November 7, 1941), the time for performance of the contract is hereby extended 10 calendar days.

7. A copy of these findings of fact will be transmitted to the contractor for its information, with attention being invited to the right of appeal to the Secretary of the Interior within 30 days as provided in article 9 of the contract. The appeal, if made, should be filed with the construction engineer, Tucumcari, N. Mex., for transmittal to the Secretary.

Dated at Denver, Colo., this 29th day of October 1948.

(Signed) RALPH LOWRY,
Contracting Officer.

UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION

TUCUMCARI PROJECT, NEW MEXICO

In the matter of delay in completion of the contract dated March 19, 1945 (symbol No. I2r–15304, between the United States and Lym Engineering Company, for construction of structures for Bell, Elliott, Roberts, State, Jack County, Liberty, Young, Coulter, Hurley, and Bend Laterals and sublaterals, Tucumcari project, New Mexico

FINDINGS OF FACT BY THE CONTRACTING OFFICER

INTRODUCTORY STATEMENT

1. On March 19, 1945, the United States (hereinafter called the Government) and J. H. Lym, and individual trading as Lym Engineering Co. (hereinafter called the contractor), entered into a contract (symbol No. I2r–15304) under items 1 to 14, inclusive, of the schedule of specifications No. 1093, for structures for Bell, Elliott, Roberts, State, Jack County, Liberty, Young, Coulter, Hurley, and Bend laterals and sublaterals, Tucumcari project, New Mexico.

2. Paragraph 21 of the specifications covering commencement, prosecution, and completion of the work provides, in part, as follows:

"* * * The contractor shall begin work within 30 calendar days after date of receipt of notice to proceed and shall complete all of the work within 100 calendar days from the date of recepit of such notice. * * *"

3. Paragraph 22 of the specifications covering liquidated damages provides, in part, as follows:

"* * * The damages that may result from any delay in completion of the work by the time agreed upon will be difficult, if not impossible, of ascertainment. If the work, or any part thereof, is not completed on or before the date fixed for its completion by the terms of the contract, the contractor shall pay to the Government, as fixed, agreed, and liquidated damages, the sum of $50 per day for each calendar day's delay until the work is satisfactorily completed or until such time as the Government may reasonably procure the completion of the work by another contractor or complete the work itself. * * *"

4. Bids for construction of the structures under specifications No. 1093 were opened on February 12, 1945, and on March 19, 1945, notice of award of the contract was mailed to the contractor. Notice to proceed was mailed to the

contractor on April 17, 1945, and was received by the contractor on April 23, 1945, thus fixing the final date for completion of all work under the contract as August 1, 1945. Copies of the notice of award, acknowledgment of receipt of notice of award, notice to proceed, and acknowledgment of receipt of notice to proceed are attached and marked "Exhibit 1" through "Exhibit 4," respectively.

5. Extra work order No. 1 dated July 9, 1945, was issued in accordance with the provisions of the specifications to provide for additional work. A copy of extra work order No. 1 is attached and marked "Exhibit 5."

6. All work under the contract was completed on February 6, 1946, thereby involving a delay in completion of 189 calendar days.

7. The contractor gave written notice of delay on account of a labor shortage of skilled labor and requested an extension of time of 140 days, by letters dated September 4, 1945 and January 19, 1946, copies of which are attached and marked "Exhibit 6" and "Exhibit 6a", respectively. In conferences at the project office and in the office of the Chief Engineer, the contractor gave oral notice of delays on account of extra work, changes in the contract drawings, and delay in delivery of Government-furnished screw-lift gates. These causes of delay were not subsequently covered by written notices of delay as required in article 9 of the contract; however, consideration thereto has been given in these findings on the basis of information taken from construction records.

STATEMENT OF FACTS

8. The contractor's request for an extension of time is based on the contention that delay in completion of work under the contract was primarily the result of a shortage of skilled labor which would not have existed had the contractor been able to transfer certain personnel, already under its employ, from other contracts then in the final stages of completion. Regarding circumstances which prevented the contractor from transferring a sufficient force of skilled labor from its work under contracts at Dugway, Utah, and Guernsey, Wyo., its letters state, in part, as follows:

(*a*) Letter of September 4, 1945 (exhibit 6):

"(*a*) Bids were opened for this project under specifications 1093 on February 12, 1945, and at that time we had approximately 100 men operating on our contract with the War Department and Chemical Warfare Service at Dugway, Utah, and was released from same with our personnel on February 15 with all necessary manpower to complete this project (so far as skilled men were concerned).

"(*b*) Several telephone calls failed to give us information that we would be awarded the contract under our low bid and under pressure of our men operating under War Manpower Commission regulation made it necessary to release our skilled men on March 15. We were informed on March 19 that award of contract would be made but no proceed order was issued until April 23, 1945.

* * * * * * *

"Our position with respect to skilled labor was critical as soon as we released the men employed at Dugway and no amount of effort has been able to overcome this situation."

(*b*) Letter of January 19, 1946 (exhibit 6a):

"Reference is made to my application for time extension filed with you September 4, 1945. Paragraph 3 item (A) states that at the bid opening, under your specification No. 1093 on February 12, 1945, that we had approximately 100 men operating on our contract with the War Department and Chemical Warfare Service, at Dugway, Utah, and that a release of this personnel took away from us our force of skilled men.

"A careful survey of our payroll records show that we had employed, exclusive of common labor, a personnel of 60 skilled workmen, consisting of carpenters, steelworkers, cement finishers, pipelayers, and equipment operators, etc. This group of skilled men were operating on two projects. One at the Chemical Warfare Service, Dugway, Utah, under our contract with the H. K. Ferguson Co., as area project management engineers, and one at our project operating at Guernsey, Wyo., with Federal Public Housing Authority. All of which personnel were released by March 15, 1945, except supervisors such as Fred L. Evans, Eugene Brooks, William C. Hoblit, Chris Rasmussen, Alex Carstens, William Gilbert, Willaim Broemer, and Gala Meigs. *Some of this personnel were not available for the Tucumcari job at the time the proceed order was issued.*

"This letter will certify to you that at the time of the bid opening, February 12, 1945, at Tucumcari, that we had in our employ sufficient personnel to properly control this project, exclusive of common labor. We were informed by telephone

conversation with the local unions that common labor could be furnished at Tucumcari. This we found to be partially correct when we attempted to man the project."

9. The contractor's statements regarding circumstances which prevented it from transferring its forces of skilled labor from Dugway, Utah, is corroborated by a letter from the United States Employment Service at Salt Lake City, Utah, to the chief engineer, dated February 21, 1946. A copy of this letter is attached and marked "Exhibit 7" and is quoted, in part, as follows:

"The regulations of the War Manpower Commission in effect during the period of time in question would allow an employer to reemploy workers who had been laid off during a period of not to exceed 30 days prior to the date of reemployment. Therefore, if, as it appears from the facts presented, Lym Engineering Co., laid off its workers on February 12, 1945, upon the completion of its contract with the H. K. Ferguson Co., it would not have been permissible under the regulations to have reemployed such personnel on March 19, 1945, the date upon which the contract with your agency was awarded without the authorization of the War Manpower Commission and it is doubtful that such authorization would be granted for work on a project carrying no priority in view of the extreme labor shortage in this area at that time.

"Had an earlier award of contract been made for the work at Tucumcari, it would have enabled the company to hold its personnel together and there was no regulation of the War Manpower Commission which would have prohibited the company from transferring these workers to its project in New Mexico."

The contractor completed a job at Dugway, Utah, on February 15, 1945, and under War Manpower Commission regulations would have been permitted to reemploy personnel from the Dugway, Utah, job on the Tucumcari work if such reemployment was effected on or before March 17, 1945. Notice of award was sent to the contractor on March 19, 1945, and receipt of the notice of award was acknowledged by the contractor on March 21, 1945 (exhibits 1 and 2).

10. The bid, as submitted by the contractor, specified acceptance within 60 days after the date of opening. A copy of the contractor's bid on United States Standard Form No. 21, attached and marked "Exhibit 8," provides that the contractor will execute the contract "upon receipt of written notice of acceptance of this bid within 60 days after the date of opening of the bids (if no shorter period be specified)." The contractor acknowledged receipt of the notice of award on March 21, 1945, 37 days after the date of opening and well within the 60-day period provided for in the bid for acceptance thereof. Accordingly, it is found that any delays which may have resulted by reason of the Government's failure to award the contract within a period shorter than the 60-day period provided in the bid, are delays due to causes which were not unforeseeable and as such are, therefore, not excusable under the provisions of article 9 of the contract.

11. After receipt of notice of award, the contractor made a diligent and continuous effort to obtain skilled labor for the work. Concerning the efforts to obtain this skilled labor from Tucumcari and the adjacent territory, the contractor's letters state, in part, as follows:

(*a*) Letter of September 4, 1945 (exhibit 6):

"(*c*) We took full advantage of the notice of award and moved equipment to the project to get organized to meet the time schedule and immediately sent calls for skilled labor to all local union offices as far east as Amarillo, Tex., south to Alamogorda, N. Mex., west to Gallup, N. Mex., and north to Denver, Colo.

"Tucumcari is located in a position remote from war and war-essential activity and the adjacent territory has been generously drained of all skilled labor for war activity elsewhere.

"Efforts to build a personnel suitable to this operation is evident from our payroll which has an accumulated personnel of 120 men and a constant turnover of skilled men who have proven incompetent. An audit of skilled workmen in the carpenter classification stands as follows:

Number of men employed:	
1 week	11
2 weeks	10
3 weeks	12
4 weeks	4
5 weeks	7
6 weeks	1
7 weeks	2
8 weeks	4
9 weeks	4
10 weeks	1
11 weeks	4
12 weeks	2
13 weeks	2
14 weeks	0
15 weeks	1
16 weeks	3
17 weeks	0
18 weeks	0
19 weeks	1
20 weeks	1
Total	70
Total man-weeks	480
Average man-week	5.9

"The above tabulation shows a continuous turnover of carpenters and a daily work average of about 15 men. This amount of thoroughly skilled men would satisfy the project for time schedule but lack of ability among those employed makes progress impossible."

12. A review of the contractors' payrolls show that a total of 140,986 man-hours, exclusive of supervisory and clerical personnel, were expended in performance of all work under the contract. An analysis of the work performed shows this amount of labor to be considerably in excess of the amount which would reasonably be required to complete the work under the contract. A graph of the man-hours expended in performance of the contract is attached and marked "Exhibit 9."

13. As stated in the contractor's letter of September 4, 1945 (exhibit 6), it is found that labor in sufficient numbers was available to the contractor but that sufficient skilled labor was lacking to permit completion within the period specified by the contract. An analysis of the work to be performed under this contract and the unit price bid therefor, compared to similar work under other contracts on this project carried on under similar conditions, shows that the contractor's bid was reasonable, and with competent supervision a total of not to exceed 90,000 man-hours should have been sufficient to complete all work, utilizing the type of labor available. Any labor expenditures in excess of this amount are considered to be the result of the lack of competent supervision as is borne out by an audit of the contractor's costs in which it is found that the total cost of labor used in completing the work exceeds the total gross earnings under the contract by 45 percent. The records show that the contractor secured and employed 90,000 man-hours on the work by October 9, 1945, or 69 calendar days after the date fixed for completion by the contract. Accordingly, it is found that completion of the work was delayed 69 calendar days due to a shortage of skilled labor which was unforeseeable, beyond the control and without the fault or negligence of the contractor, and is therefore excusable under the provisions of article 9 of the contract.

14. Under extra work order No. 1 (exhibit 5), the contractor was required to perform extra work amounting to 1.4 percent of the work performed under the contract. In view of the limited labor supply, it is found that an equivalent percentage of the 289 calendar days required to perform all of the work is properly chargeable to the work performed under the extra work order. Accordingly, it is found that completion of the work was delayed 4 calendar days as a result of extra work ordered by the Government, which was an unforeseeable cause of delay beyond the control and without the fault or negligence of the contractor, and is excusable, therefore, under the provisions of article 9 of the contract.

15. The contractor was required to construct cutoff walls for some of the structures to dimensions larger than those shown on the drawings and rectangular in shape instead of trapezoidal as shown on the drawings. Such changes were made pursuant to paragraph 40 of the specifications, which provides, in part, as follows:

"* * * Some of the drawings included in these specifications are typical only of the structures to be constructed and the detail dimensions of the structures as they are to be constructed will be fixed by the contracting officer to adapt the structures to the existing conditions at the structure sites, * * *"

Accordingly, it is found that there is no proper basis under the contract for an extension of time by reason of changes ordered in the dimensions of the structures.

16. Paragraph 23 of the specifications provides, in part, as follows:

"* * * The Government will furnish * * * screw-lift vertical gates; * * *"

The contractor was ready for installation of the first gate on May 23, 1945, and was ready for installation of the last gate on January 23, 1946. All of the gates, except 3, were delivered to the contractor on September 25, 1945; the remain-

ing 3 gates were delivered to the contractor on February 6, 1946, the date on which the work was accepted as substantially complete. Painting and installation of the gates was begun on September 28, 1945, and, except for the 3 gates not yet delivered, work was completed on November 25, 1945, 73 calendar days before completion of the other items of work. Painting and installation of the remaining three gates was performed in connection with cleanup work during the period from February 6 to February 16, 1945, after conditional acceptance of the work and without involving any liquidated damages under the contract. The only operation which was delayed by late delivery of the gates was the painting and installation thereof. The painting and installation of the gates did not delay acceptance of the work beyond the date when it was otherwise completed. Accordingly, it is found that completion of the work was not delayed because of late delivery of the Government-furnished screw-lift gates.

SUMMARY OF FINDINGS

17. From the foregoing statement of facts, the following summary of findings is made:

(*a*) The contract provided that all work under the contract should be completed within 100 calendar days from the date of receipt of notice to proceed, which was received by the contractor on April 23, 1945.

(*b*) The work was accepted as substantially complete on February 6, 1946, 289 calendar days after receipt of such notice, thereby involving a delay of 189 calendar days in the completion of the work.

(*c*) Written notice of delay on account of a shortage of skilled labor was given by the contractor on September 4, 1945. The contractor also gave oral notice of delay on account of extra work, changes in drawings, and delay in delivery of Government-furnished screw-lift gates.

(*d*) It is found that completion of the work was delayed 69 calendar days due to a shortage of skilled labor, which was an unforeseeable cause of delay, beyond the control and without the fault or negligence of the contractor. This delay is excusable, therefore, under the provisions of article 9 of the contract.

(*e*) It is found that completion of the work was delayed 4 calendar days because of extra work, which was an unforeseeable cause, beyond the control and without the fault of negligence of the contractor. This delay is, therefore, excusable under the provisions of article 9 of the contract.

(*f*) It is found that there is no proper basis under the provisions of the contract for an extension of time based on changes in dimensions of cutoff walls for the structures.

(*g*) It is found that completion of the work was not delayed because of late elivery of Government-furnished screw-lift gates.

18. In accordance with the provisions of article 9 of the contract (United States Standard Form No. 23, revised Nov. 7, 1941), the time for performance of the work under the contract is hereby extended 73 calendar days.

19. A copy of these findings of facts will be transmitted to the contractor for its information, with attention being invited to the right of appeal to the Secretary of the Interior, as provided in article 9 of the contract. The appeal, if made, should be filed in this office within 30 calendar days from the date hereof, for transmittal to the Secretary of the Interior.

Dated at Denver, Colo., this 10th day of October 1946.

(Signed) RALPH LOWRY,
Contracting Officer.

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Calendar No. 1219

84TH CONGRESS } SENATE { REPORT
1st Session } { No. 1204

AMENDING THE FLAMMABLE FABRICS ACT TO EXEMPT FROM ITS APPLICATION SCARVES WHICH DO NOT PRESENT AN UNUSUAL HAZARD

JULY 28, 1955.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 1455]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1455) to amend the Flammable Fabrics Act to exempt from its application scarves which do not present an unusual hazard, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The bill would amend the Flammable Fabrics Act to exempt from its application scarves made of plain-surface fabrics.

This bill is consistent with the original intent of Congress in enacting the Flammable Fabrics Act to exempt fabrics and wearing apparel which are not highly flammable and which present no unusual fire hazard or danger to the public.

Under the flammability standards provided in the present law, any plain-surface fabric intended for use in wearing apparel which exhibits a burning rate of less than 3½ seconds when tested in a prescribed manner is classified as "rapid and intense burning," and is banned in commerce. Plain-surface fabrics, which exhibit a burning rate of 3½ seconds or more are classified as having "normal" flammability, and are considered as relatively safe for use in wearing apparel.

Many silk scarves made of plain-surface fabrics fail by a narrow margin to meet this minimum requirement of a 3½ seconds burning rate established for relatively safe fabrics.

So far as can be determined, such scarves have never presented any unusual fire hazard or danger to the public. If ignited, the flame can easily be extinguished by merely patting the scarf with the hand, for

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Calendar No. 1220

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1205

SPYROS NICHOLAOU LEKATSAS

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 792]

The Committee on the Judiciary, to which was referred the bill (S. 792) for the relief of Spyros Nicholaou Lekatsas, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Spyros Nicholaou Lekatsas. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 38-year-old native and citizen of Greece whose only entry into the United States was at Norfolk, Va., on November 27, 1951, when he was admitted as a seaman. His wife and three children whom he supports had been living in Greece until they were lawfully admitted to the United States for permanent residence on June 12, 1955. They were made destitute by a recent earthquake which destroyed the island of Cephalonia and had been in Pirius as refugees. The beneficiary and his half-brother run a diner in Connecticut.

A letter, with attached memorandum, dated May 26, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., May 26, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 792) for the relief of Spyros Nicholaou Lekatsas, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Hartford, Conn., office of this Service which has custody of those files.

The bill would grant the alien permanent residence in the United States upon the payment of the required visa fee. It also directs that one number be deducted from the appropriate immigration quota, for the first year that such quota is available.

The alien is chargeable to the quota of Greece.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE SPYROS NICHOLAOU LEKATSAS, BENEFICIARY OF S. 792

Spyros Nicholaou Lekatsas is a native and citizen of Greece born on September 17, 1917. He married Elli Georgopoulou in Greece in September 1942. His wife and 3 children, Eleni, age 11, Barbara, age 7, and Anastasia, age 5, were all born and reside in Greece. He attended elementary school and 3 years of high school in Greece. Mr. Lekatsas resides at 1253 Main Street, Stamford, Conn., with his half-brother, Andreas Grigoratas, who is also illegally in the United States.

The beneficiary's only entry into the United States was at Norfolk, Va., on November 27, 1951, as an alien seaman on the steamship *Themistokles*. Deportation proceedings were instituted on May 13, 1952, on the ground that after admission as a seaman he had remained in the United States longer than permitted and he was ordered deported on July 15, 1952. This decision was appealed and on October 31, 1952, his appeal was dismissed by the Board of Immigration Appeals. A warrant of deportation issued against him on November 13, 1952, is outstanding. Mr. Lekatsas was the beneficiary of private bill S. 1028 in the 83d Congress.

The beneficiary served in the Greek Army from 1938 to 1941. He alleges that he sends approximately $100 a month to Greece for the support of his wife and children.

A letter dated July 15, 1955 to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., July 15, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: Reference is made to a report on the bill (S. 792) for the relief of Spyros Nicholaou Lekatsas which was forwarded to your committee on May 26, 1955.

The records of this Service indicate that the beneficiary's wife and three minor children were lawfully admitted to the United States for permanent residence on June 12, 1955.

Sincerely,

———— ————, *Commissioner.*

Senator William A. Purtell, the author of the bill, submitted the following information in connection with the case:

UNITED STATES SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
May 25, 1955.

Senator HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR KILGORE: I am writing to you with reference to the case of Spyros N. Lekatsas, as covered by bill S. 792, which I introduced on January 28, 1955, in his behalf.

May I give you this brief background information concerning the subject of this bill:

Mr. Lekatsas is 38 years of age, having been born September 17, 1917, on the island of Cephalonia, Greece. He married Elli Georgopoulou on September 12, 1942. They have three children, Eleni, born July 1, 1943; Barbara, born November 1948, and Anastasia, born in 1950. He left Greece October 22, 1951, by plane to Belgium to become a seaman. He was taken to Norfolk, Va., where he was given a 30-day leave. He went to work at the Half-Way House in Stamford in August of 1953.

As you know the island of Cephalonia was destroyed by earthquake, and I am told Mr. Lekatsas' family was transferred to Pirius as refugees. Mr. Lekatsas is presently expecting his family to come to the United States as refugees from Cephalonia, but meanwhile he and his brother are said to be contributing approximately $150 a month in support of his wife, his three children, and his father and mother.

I am attaching hereto statements from the chief of police, city of Stamford, Conn., where Mr. Lekatsas resides as well as a statement from his employer which speak for themselves.

I hope you may be able to give early and favorable consideration to bill S. 792.

Sincerely yours,

WILLIAM A. PURTELL,
United States Senator.

MARCH 29, 1955.

E. GAYNOR BRENNAN, ESQ.,
Stamford, Conn.

DEAR MR. BRENNAN: Mr. Spyros N. Lekatsas was in my employ since his arrival here. I found him to be competent and a good and industrious worker. His character and conduct from my observation was exemplary. He was trustworthy and considerate, of good moral habits and saved his money in order to help his family in Cephalonia, Greece.

Very truly yours,

WILLIAM COCOLI.

CITY OF STAMFORD, CONN.,
POLICE DEPARTMENT,
March 30, 1955.

Re Spyros N. Lekatsas, 1253 East Main Street, Stamford, Conn.

To Whom It May Concern:

This is to certify that Spyros N. Lekatsas has no record in the files of this department.

He has resided in this city since August 1953.

Very truly yours,

STAMFORD POLICE DEPARTMENT,
JOSEPH W. KINSELLA, *Chief of Police.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 792) should be enacted.

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Calendar No. 1221

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1206

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ANNA MERTIKAS

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1415]

The Committee on the Judiciary, to which was referred the bill (S. 1415) for the relief of Anna Mertikas, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant to the minor child to be adopted by citizens of the United States the status of a nonquota immigrant which is the status normally enjoyed by the alien minor children of United States citizens.

STATEMENT OF FACTS

The beneficiary of the bill is a 13-year-old native and citizen of Greece who presently resides in that country. She is to be adopted by Mr. and Mrs. D. Jim Mertikas, citizens of the United States. The beneficiary is their niece and they are most anxious to provide a home for her in this country. The beneficiary's natural parents have consented to the adoption.

A letter, with attached memorandum, dated July 8, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the case, reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington 25, D. C., July 8, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1415) for the relief of Anna Mertikas, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the St. Louis, Mo., office of this Service, which has custody of those files.

The bill would grant the beneficiary nonquota status under the Immigration and Nationality Act by providing that she shall be held and considered to be the natural born alien child of United States citizens.

The beneficiary is chargeable to the quota of Greece.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE ANNA MERTIKAS, BENEFICIARY OF S. 1415

The beneficiary, Anna Mertikas, also known as Anastasia Merticas, a native and citizen of Greece, was born in 1942. She resides in Greece with her parents, two sisters and a brother. She attends elementary school, has no income or assets and has never been in the United States.

The sponsors of the bill are Mr. and Mrs. D. Jim Mertikas, naturalized citizens of the United States, who have no children. The beneficiary is their niece, and they desire to bring her to the United States, adopt her and assure her an education and citizenship in the United States. They have stated that the beneficiary's parents have consented to the proposed adoption.

D. Jim Mertikas owns a home and a prominent restaurant. His annual income is in excess of $10,000 and his assets exceed $100,000. He was arrested and fined several times for violation of liquor control laws during prohibition. His last arrest was on March 23, 1933.

Senator Thomas C. Hennings, Jr., the author of the bill, wrote to the chairman of the Senate Judiciary Committee on July 22, 1955, as follows with reference to the case:

UNITED STATES SENATE,
July 22, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Committee on the Judiciary,
Washington, D. C.

DEAR HARLEY: I am very interested in S. 1415, which I introduced during this session.

I have known Mr. D. Jim Mertikas for a number of years, and he is very anxious to have Anastasia start school in the United States this fall. Mr. Mertikas, I understand has made the necessary arrangements to adopt Anastasia according to the laws of Greece and Missouri. Mr. and Mrs. Mertikas have advised me that Anastasia's parents are living and they wish to send her here as she will have a good home and an excellent education.

I shall appreciate consideration of S. 1415 on the next agenda of the Senate Committee on the Judiciary.

With kindest regard to you, I am

Sincerely,

THOMAS C. HENNINGS, JR.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1415) should be enacted.

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84TH CONGRESS, 1st Session

SENATE

Calendar No. 1222

REPORT No. 1207

LADISLAV MENCL

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2088]

The Committee on the Judiciary, to which was referred the bill (S. 2088) for the relief of Ladislav Mencl, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Ladislav Mencl. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 21-year-old native of Czechoslovakia who escaped to West Germany on Christmas Day, 1951. He joined the United States Army under the Lodge Act on July 22, 1953, and was admitted to the United States October 23, 1953, at New York. On September 16, 1954, he bailed out of a plane on a routine jump and his parachute failed to open. He fell into another paratrooper's chute which broke his fall but he sustained a broken back and a broken left leg when he disengaged himself from the parachute. He has been under treatment at Walter Reed Hospital, Washington, D. C., and is scheduled to be discharged from the Army right away. He requires additional surgery but is too depressed over the uncertainty of his future to go through with it now.

A letter, with attached memorandum, dated July 25, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 25, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In reference to your request for a report relative to the bill (S. 2088) for the relief of Ladislav Mencl, there is attached a memorandum of information concerning the beneficiary which has been prepared from the Immigration and Naturalization files relating to the beneficiary.

The bill would grant the beneficiary permanent residence in the United States as of the date of its enactment upon payment of the required visa fee. It would also direct that one number be deducted from the appropriate quota for the first year that such quota is available.

The beneficiary is chargeable to the quota of Czechoslovakia.

Sincerely,

——— ———, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE LADISLAV MENCL, BENEFICIARY OF S. 2088

The beneficiary, a private, first class, in the United States Army, is a patient at the Walter Reed Hospital, Washington, D. C., where he is undergoing treatment for a broken back and a double fracture of his left leg sustained during a practice parachute jump at Fort Bragg, N. C., on September 16, 1954. He is to receive a medical discharge in the near future and will proceed to the veterans hospital at Cleveland, Ohio, for further treatment.

The beneficiary was born on June 20, 1934, at Kladno, Czechoslovakia. He enlisted in the United States Army on July 22, 1953, at Nuremburg, Germany, for a period of 5 years under the provisions of Public Law 597, 81st Congress. He last entered the United States at New York, N. Y., on October 23, 1953, as a member of the United States Army.

Prior to his enlistment he was employed as a guard protecting American property in Nuremburg,and Baumholder, Germany. His mother, father, and a brother reside in Kladno, Czechoslovakia, and his only known relative in the United States is an uncle, John Blahovec, who resides at Cleveland, Ohio.

The beneficiary completed the 11th grade of schooling in his native country. He has a monthly income of $99 and savings in the amount of $700.

Senator George H. Bender, the author of the bill, has submitted the following information in connection with the case:

UNITED STATES SENATE,
Washington, D. C., July 22, 1955.

Re S. 2088.

Hon. HARLEY M. KILGORE,
United States Senate, Washington, D. C.

DEAR HARLEY: I have introduced this bill in behalf of Private Ladislav Mencl. The Commissioner of Immigration has made a very special effort to obtain the necessary reports in connection with the case in view of the meritorious circumstances surrounding it. I am told this report will be delivered to you by hand on Monday, July 25, without fail.

I am deeply concerned about this lad, and submit the enclosed memorandum for your personal information. The Army is discharging young Mencl either today or Monday, and I should be most grateful if you can schedule a special session of your subcommittee to consider the bill. Aside from the technical angles of this case, the psychological aspects would have a great moral effect on this lad. In view of his need for additional surgery, I feel this action highly desirable.

With my thanks for your kindness in this matter, I am,

Cordially,

GEORGE H. BENDER,
United States Senator.

P. S.—Harley, I understand, after writing the above, that your committee has a hearing scheduled for Monday. The Immigration Service is endeavoring to get the report in this case to you by 10 o'clock. If so, if it is possible for your committee to consider the matter at that meeting, I should be most grateful.

MEMORANDUM RE LADISLAV MENCL

Born: June 20, 1934, in Kladno, Czechoslovakia. Escaped on Christmas Day, 1951, to West Germany with two school chums. He was in the 11th grade of school at the time. Joined United States Army in Germany under the Lodge Act on July 22, 1953. Was admitted to United States of America on October 23, 1953, at New York. Sent to Fort Bragg, N. C., where he became a paratrooper.

On September 16, 1954, he bailed out of plane on routine jump and his parachute failed to open. His reserve chute also failed to open when he realized danger and attempted to open it. He fell into another paratrooper's chute, breaking fall; however, disengaged himself from it and fell some 1,000 feet to the ground. Injuries sustained were a broken back and left leg broken in two places.

Admitted to Walter Reed Hospital for treatment. Appeared before discharge board and was told he would be discharged in June, and that he would be deported. There was no administrative remedy for his immigration status since he was not fit for further Army duty and no provisions of the immigration laws covered his particular situation. Senator Bender and Congressman Minshall of Ohio have introduced bills in the Senate and House, respectively, in his behalf.

Commissioner Swing's office promised full cooperation and report has been promised by Monday, July 25, in an effort to have bill considered during this session of Congress.

Mencl has one second cousin (only relative in States) in Cleveland, Ohio. She is Mrs. John Blahovec, 3558 East 138th Street. His immigration status must be clarified before he can enter a Veterans' Administration hospital for additional surgery which he requires rather badly. The doctors at Walter Reed report his mental condition is not such at this time for him to undergo this surgery at Walter Reed. He has become depressed and demoralized as a result of the uncertainty of his future. Believe favorable action by Senate will be great psychological boost for him.

Mencl has father, mother, and one younger brother behind Iron Curtain. Is desperately afraid publicity in his case will cause harm to come to them.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2088) should be enacted.

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Calendar No. 1223

84TH CONGRESS, 1st Session — SENATE — REPORT No. 1208

LUCIA MARY ANN LUCCHESI MARCHI

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2154]

The Committee on the Judiciary, to which was referred the bill (S. 2154) for the relief of Lucia Mary Ann Lucchesi Marchi, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to enable a former native-born citizen of the United States to regain her United States citizenship which was lost under the provisions of section 401 (a) of the Nationality Act of 1940.

STATEMENT OF FACTS

The beneficiary of the bill is a 56-year-old native-born citizen of the United States who was born of naturalized United States citizen parents. Her parents returned to Italy to obtain medical treatment when she was 11 years old. The beneficiary cared for her parents and for her younger sister who was also ill, until they all died. After World War II she saved enough money for transportation to the United States and obtained her passport on February 28, 1950, at the American consulate in Florence, Italy. The beneficiary was married to a native and citizen of Italy on December 2, 1933, and they have a 20-year-old son who entered the United States with her on May 13, 1950. She applied for nonquota status for her husband, but the State Department claims she had lost her own citizenship when her father lost his by prolonged residence in his native country. After her father had acquired United States citizenship, he lived in the United States 28 years before returning to Italy.

A letter, with attached memorandum, dated October 5, 1954, to the then chairman of the Senate Committee on the Judiciary from the

Commissioner of the Immigration and Naturalization Service with reference to S. 3554 which was a bill pending in the 83d Congress for the relief of the same beneficiary reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., October 5, 1954.

Hon. WILLIAM LANGER,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request of the Department of Justice for a report relative to the bill (S. 3554) for the relief of Lucia Mary Ann Lucchesi Marchi, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Boston, Mass., office of this Service, which has custody of those files.

The bill is intended to authorize the naturalization of Lucia Mary Ann Lucchesi Marchi who lost United States citizenship under the provisions of section 401 (a) of the Nationality Act of 1940 within 1 year of the effective date of this act by taking before any court referred to in subsection (a) of section 310 of the Immigration and Nationality Act or before any diplomatic or consular officer of the United States abroad an oath as prescribed by section 337 of said act. The bill further provides that from and after such naturalization the said Lucia Mary Ann Lucchesi Marchi shall have the same citizenship status as that which existed immediately prior to its loss.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE LUCIA MARY ANN LUCCHESI MARCHI, BENEFICIARY OF S. 3554

The beneficiary, Lucia Mary Ann Lucchesi Marchi nee Lucchesi, is a native of the United States who was born on October 19, 1898, in Brown's Gulch, Butte, Mont. She resided in the United States until about August 1909, at which time she went to Italy with her mother, Margherita Lucchesi, a native of Italy, to reside. Her father, Giuseppe Lucchesi, a native of Italy, returned to Italy to reside in July 1910. The beneficiary resided in Italy until May 1950, at which time she departed for the United States and was admitted to this country as a United States citizen at New York, N. Y., on May 13, 1950. At the time of her admission to the United States on May 13, 1950, she was in possession of a United States passport issued to her at the American consulate in Florence, Italy, on February 28, 1950.

The beneficiary was married in Borgo a Mozzano, Lucca, Italy, to Ranieri Marchi, a native citizen of Italy, on December 2, 1933. A son, Marco Marchi, was born on September 2, 1934, in Borgo a Mozzano, Italy, and her son entered the United States with her on May 13, 1950, and was admitted as a United States citizen. It has been established that the beneficiary's father, Giuseppe Lucchesi, became a naturalized citizen of the United States in the district court, White Pine, Nev., in October 1882; and that this fact was not known at the United States consulate in Florence, Italy, at the time the beneficiary was issued her United States passport on February 28, 1950.

A report dated December 2, 1953, was received by this Service from the Department of State under their file Y-130, with which there was enclosed a copy of the certificate of the loss of nationality of the United States under section 401 (a) submitted in Mrs. Marchi's case. The Department of State in their report of December 2, 1953, reported that their file in Mrs. Marchi's case showed that at the time she executed an application for registration on May 19, 1948, at the American consulate in Florence, Italy, she stated that her father was not naturalized as a citizen of the United States, and the usual investigation conducted by the consulate in her case showed that she had not expatriated herself in any manner, and a passport valid only for travel to the United States was authorized.

The Department of State report previously mentioned further said that occasion was had to review Mrs. Marchi's case in July 1950 in connection with an application executed by her brother and a certificate of expatriation submitted in the case of her father, Joseph Lucchesi; that it then appeared that Joseph Lucchesi, father of Mrs. Marchi, was naturalized as a citizen of the United States before the district court, White Pine, Nev., in October 1882; that it was held that since

her father reacquired Italian nationality on July 1, 1914, under the provisions of article 9 (3) of the Italian Nationality Law of June 13, 1912, and had manifested acceptance of such nationality he had expatriated himself under the provisions of section 2 of the act of March 2, 1907; that Mrs. Marchi, who was then a minor residing in Italy with her father, acquired Italian nationality under article 12 of the same Italian law as a result of the reacquisition of such nationality on the part of her father; that since Mrs. Marchi failed to establish a permanent residence in the United States prior to January 13, 1943, the Department of State is of the opinion that section 401 (a) of the Nationality Act of 1940 operated in her case; and that she is not entitled to documentation as an American citizen; and that in the meantime Mrs. Marchi had been issued a passport and had arrived in the United States. Mrs. Marchi has informed this Service that she informed the United States consulate in Florence, Italy, that her father had not been naturalized in the United States because she was unaware that he had done so at that time.

The beneficiary filed a petition by United States citizen for issuance of an immigrant visa in behalf of her husband, Ranieri Marchi, on March 5, 1954, at the Boston office of this Service. This petition was disapproved by the district director of this Service at Boston on May 25, 1954, on the ground that she had failed to establish that she was a citizen of the United States. In an appeal dated May 26, 1954, received at the Boston office of this Service on June 9, 1954, the beneficiary appealed the decision disapproving her petition for an immigrant visa in behalf of her husband to the Board of Immigration Appeals, but to date no decision has been made by that Board.

The beneficiary's son, Marco Joseph Marchi, was issued a derivative citizen certificate by this Service at Boston, Mass., on March 3, 1954. She resides with her son and her brother, Joseph, at 27 Bond Street, Somerville, Mass. She received 5 years of schooling in the United States prior to her departure in 1909 and 4 years of schooling in Italy. The beneficiary has $500 in a joint bank account with her son. She has been employed as a pantry worker in the Parker House, Boston, Mass., since June 11, 1950, and is presently earning $42 per week, plus her meals, and is paid $12 per week by her brother who resides with her. She was not employed for wages in Italy. Other than her son and brother, she has no near relatives living in the United States. Her parents are both deceased, and her husband is residing in Fornoli, Province of Lucca, Italy. Her husband is unemployed, and she is supporting him.

Senator John F. Kennedy, the author of the bill, has submitted the following information in connection with the case:

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF EDUCATION

DIVISION OF IMMIGRATION AND AMERICANIZATION

BOSTON

DECEMBER 24, 1953.

Dr. EDOARDO STEFANUTTI,
Physician-Surgeon, Bagni di Lucca.

I, the undersigned, attest that Guiseppe Lucchesi, son of the late Ismaele, father of Lucia and Emma Lucchesi, of Bagni di Lucca, in 1910 returned from abroad with a serious illness in the gastro intestinal organ (epithelioma) for which he had to undergo a long cure and be bedridden and from which he died in 1929, always attended by his daughter, Lucia Lucchesi-Marchi, who was unable to abandon him until the end.

Issued on paper without stamps for uses permitted by law.

Dr. E. STEFANUTTI.

Seen for the authentication of the signature of Dr. Stefanutti Edoardo, physician-surgeon of this community.

G. LOMBARDI, *Mayor.*

Bagni di Lucca, December 26, 1953.

I certify that the above translation from the Italian into English is correct.

MARY MUSMANNO, *Translator.*

Subscribed and sworn to, before me, this 9th day of June 1954, at Boston, Mass.

TEOFILIA K. TATTAN, *Notary Public.*

My commission expires September 9, 1955.

MRS. LUCIA MARCHI

(Lucia Mary Anna (nee Lucchesi) Marchi)

SOMERVILLE, MASS.

Father

Giuseppe (Joseph) Lucchesi, born in Italy, about September 29, 1855; emigrated to the United States in 1877; naturalized a citizen of the United States at White Pine, Nev., in October 1882. Visited Italy in the year 1900—left in spring of 1900 and returned in fall of 1900—upon advice of American doctors for medical treatment in Italy. Again obliged to return to Italy in July 1910, because of ill health. He never regained his health. When he left Deer Lodge, Mont., in 1910, he had a business which consisted of a Government concession for cutting beams for the copper and silver mines in Butte, Mont.; he left this business in the care of his brother and was never able to recover the full amount due him from this business. He resided in Italy from 1910 until his death in Italy on February 26, 1929. During all this residence he never performed any act to renounce his United States citizenship. The only positive act was that in 1928 he obtained an Italian certificate of identity which was required. Our naturalization law up to 1940 provided only for a presumption of loss of United States citizenship by a naturalized citizen by protracted residence abroad. The United States Government holds he lost his United States citizenship under the Italian nationality law of June 13, 1912, by residence in Italy for 2 years. However, we did not then have a naturalization treaty with Italy so this Government is not obliged to recognize it. In 1928 when he was issued the Italian card of identity—his daughter, Lucia Mary Anna Lucchesi was over 21 years of age so that if the Government contends he lost his citizenship in 1928, she was then over 21 years of age and this act should have no bearing on her citizenship. The United States Government also contends that the father established a business in Italy shortly after his return therein 1910; he did establish a business because he had to provide for support of his family; however, he was always a sick man; he employed from 5 to 15 people in his business (depending on the season) and his own children also worked there; he was not able to work himself. (See photostatic copy of certificate of Dr. Edoardo Stefanutti dated December 24, 1953—with translation—regarding health of Giuseppe Lucchesi.)

Mother

Mother of Mrs. Marchi was born in Italy; she came to the United States and acquired United States citizenship by the naturalization of her husband. She returned to Italy in 1909 because she was not well and lived there until her death in April 1939.

Mrs. Lucia Marchi (Lucia Mary Anna (Lucchesi) Marchi) born in Butte, Mont. (Brown's Gulch) on October 19, 1898; taken to Italy by her mother in 1909. Resided in Italy from 1909 until May 13, 1950. Married to Ranieri Marchi on December 2, 1933, at Borgo a Mozzano, Province of Lucca, Italy. She was issued a United States passport which she used to return to the United States on May 13, 1950, passport No. 189. She was unable to return to the United States before that time for various family reasons:

(1) As a young child she had to stay in Italy with her parents.

(2) Later she was unable to return because her sister, Emma Lucchesi, who was born in Brown's Gulch, Mont., on March 15, 1892, became paralyzed in 1913. The paralysis affected one leg, her arm, and throat; she could not walk alone and had to be helped to walk a few steps. Mrs. Marchi was the only other daughter in the family; the mother was sickly and aged and could not care for sick daughter; mother died in April 1939, at age of 70. The sister, Emma Lucchesi, died in Italy, in April 1943 (see certificate from Dr. Edoardo Stefanutti dated December 24, 1953 and translation).

(3) At that time World War II was still going on. It wasn't until 1945 that conditions became normal. Mrs. Marchi then wrote to relatives in Montana for help in getting proof of her United States birth and for money to pay for her transportation; she tried for 2 years without getting any response from them. Finally in the spring of 1948 she was able to scrape together enough money to pay for her transportation to the United States. She applied for United States passport and it was issued to her.

Son:

Marco Agostino Marchi born in Italy on September 2, 1934. He traveled to the United States with mother on United States passport and was admitted as a

citizen on May 13, 1950. He is not married; resides with Mrs. Marchi at 27 Bond Street, Somerville. He applied for a certificate of derivative citizenship; it was granted by the Immigration and Naturalization Service and he was issued certificate of citizenship No. AA–47442 on February 17, 1954.

Husband:

Ranieri Marchi, born in Italy on September 19, 1890; still living at Fornoli, Province of Lucca, Italy. Mrs. Marchi submitted a petition (form I–133) for nonquota immigration visa for her husband; this was approved by the Immigration and Naturalization Service in Boston on October 24, 1950, under file 0200–105209. However, the American consulate general in Genoa, Italy refused to grant him immigration visa because he decided she was not a United States citizen. The matter has been pending before the United States Immigration and Naturalization Service since 1950. Mrs. Marchi submitted a second petition (form I–133) in behalf of her husband on March 25, 1954; this was denied for the following reason: "That she failed to establish that she was a United States citizen." An appeal was made to the Board of Immigration Appeals, Department of Justice, Washington, D. C. on June 9, 1954. The appeal was denied May 16, 1955.

PRESENT STATUS OF MRS. MARCHI

On June 16, 1955, the Immigration and Naturalization Service at Boston served a warrant of arrest on Mrs. Lucia Mary Anna Marchi charging that she was an alien illegally in the United States and subject to deportation on the following grounds: "Section 241 (a) (1) of the Immigration and Nationality Act, in that, at the time of entry, she was within one or more of the classes of aliens excludable by the law existing at the time of such entry, to wit, an immigrant not in possession of a valid immigration visa, in violation of section 13 (a) of the act of May 26, 1924, and not exempt from the presentation thereof by the said act or regulations made thereunder." She was given a hearing by the Immigration and Naturalization Service in Boston on this charge on June 21, 1955; she was advised that the only relief for her was voluntary departure.

SUMMARY

Mrs. Lucia Marchi was born in the United States. Her father was born in Italy; he resided in the United States a total of 33 years, 28 years after he was naturalized as a United States citizen, he did not return to Italy until 28 years after his naturalization and then only because of ill health and upon advice of doctors. He resided in Italy from 1910 to his death in 1929 and the only act by him which can be considered as accepting Italian nationality was in 1928 when he applied for an Italian certificate of identity, at that time Mrs. Marchi was over 21 years of age. Mrs. Marchi never performed any act of her own which deprived her of her United States citizenship, which she acquired by birth in the United States. She states that she inquired at the American consulate in Leghorn, Italy, sometime between 1930 and December 1933 (date of her marriage) whether an American born woman would lose her United States citizenship by residing in Italy and was told that American born persons never lost citizenship by residence abroad. The Government finds no record of this interview.

Mrs. Marchi has been involuntarily separated from her husband for 5 years. Now, the Government wants to deport her to Italy or force her to leave the United States because they claim she is not a citizen.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2154) should be enacted.

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Calendar No. 1224

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1209

NICKOLAS MENIS

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2166]

The Committee on the Judiciary, to which was referred the bill (S. 2166) for the relief of Nickolas Menis, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant to the minor child to be adopted by citizens of the United States the status of a nonquota immigrant which is the status normally enjoyed by alien minor children of United States citizens.

STATEMENT OF FACTS

The beneficiary of the bill is a native and citizen of Greece who will be 3 years old November 20, 1955. He presently resides in Greece with his parents. Mr. and Mrs. Antonio N. Panopoulos, the sponsors, are naturalized citizens of the United States residing in Cheyenne, Wyo. Mrs. Panopoulos is a sister of the beneficiary's mother. The boy's natural parents are willing to have the beneficiary adopted because of economic circumstances.

A letter, with attached memorandum, dated July 15, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 11, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2166) for the relief of Nickolas Menis, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Seattle, Wash., office of this Service, which has custody of those files.

The bill would confer nonquota status upon the beneficiary by providing that he shall be considered the natural-born alien child of Mr. and Mrs. Antonio N. Panopoulos, citizens of the United States.

As a quota immigrant the beneficiary would be chargeable to the quota of Greece.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES CONCERNING NICKOLAS MENIS, BENEFICIARY OF S. 2166

Information concerning the beneficiary was obtained from Mr. and Mrs. Antonio N. Panopoulos, sponsors, who reside at 912 East 22d Street, Cheyenne, Wyo.

The beneficiary, Nickolas Menis, is a native and citizen of Greece, born November 20, 1952. He is living in Greece with his parents, Ionis and Despina Menis. He is the second of four children, is too young to be employed, and has never attended school. He has no income and is dependent upon his parents for support.

The sponsors, Mr. and Mrs. Antonio N. Panopoulos, also known as Antonios Panopoulos, are natives of Greece and naturalized citizens of the United States. They have no children. Mr. Panopoulos is employed as a laborer and earns an average of $3,400 per annum. They have assets valued at $29,000. Mrs. Panopoulos is the sister of the beneficiary's mother. The beneficiary's parents have indicated their willingness to have their son come to the United States and live with the sponsors because of economic conditions in Greece. It is the intention of the sponsors to adopt the beneficiary upon his arrival in this country.

Senator Joseph C. O'Mahoney, the author of the bill, has submitted the following information in connection with the case:

AFFIDAVIT

STATE OF WYOMING,
County of Laramie, ss:

Comes now Antonio N. Panopoulos and Marie Panopoulos, and after being duly sworn depose and say:

1. That they are husband and wife and have been since the 4th day of May, 1930.

2. That the said husband is 60 years of age and said wife is 50 years of age; that they were both born in Greece and are naturalized citizens of the United States; that said husband was naturalized on July 5, 1927, and said wife was naturalized on July 5, 1940.

3. That said husband has been employed by the Union Pacific Railroad Co. in Cheyenne, Wyo., for the past 29 years; that he earns approximately $3,400 per year.

4. That said husband and wife own their own home without encumbrances; that said home has a reasonable value of $17,000; that they further hold and own $10,000 in United States savings bonds; that they have a further income of $60 per month from rental of an apartment.

5. That the only child of said husband and wife is deceased and they have no dependents at this time.

6. That said husband and wife are both in good health and have a reputation for honesty, good character, and high morals in their home community.

7. That said husband and wife are most anxious to adopt Master Nick Menis; that said child is a blood nephew of said wife; that said child's parents consent and agree to said adoption; that said husband and wife are able to support, care

for and rear said child in a proper and desirable home atmosphere; that said husband and wife will adopt said child at the earliest possible date in the courts of the State of Wyoming.

In witness whereof we have hereunto set our hands and seals under oath on this 7th day of March 1955.

ANTONIO N. PANOPOULOS,
MARIE PANOPOULOS.

Subscribed and sworn to before me this 7th day of March 1955.

[SEAL] VINCENT A. ROSS,
Notary Public.

My commission expires December 2, 1957.

CONSENT TO ADOPTION

This is to certify that we, John Menis and Dorothy Menis, husband and wife; of Dafnon, Chios, Greece, are the father and mother respectively, and the natural parents of Nick Menis, minor child; that said child was born on the 20th day of November 1952, in Dafnon, Chios, Greece; that we are acquainted with Antonio N. Panopoulos and Marie Panopoulos, husband and wife, of Cheyenne, Laramie County, Wyo., inasmuch as the said Marie Panopoulos is a sister of the said Dorothy Menis; that the said Antonio N. Panopoulos and Marie Panopoulos are fit and proper persons to have the care and custody of said child and should be permitted to adopt said child.

That it is our desire that said Antonio N. Panopoulos and Marie Panopoulos be permitted to adopt said child; that said adoption would be for the best interests for said child inasmuch as we, his parents, have a large family and find it most difficult to furnish said child with the necessities of life; that we are agreeable to said adoption of said child and hereby give our consent to Antonio N. Panopoulos and Marie Panopoulos to adopt said Nick Menis, minor child, as their own and legally adopted child and hereby waive all of our rights to and interest in said child as his natural parents.

We and each of us hereby waive any further notice whatsoever in regard to the adoption of the said child by said parties, and are prepared upon request to surrender custody and possession of said child forthwith.

Dated this ------ day of ----------, 1955.

JOHN MENIS, *Father.*
DOROTHY MENIS, *Mother.*

ACKNOWLEDGMENT

----------,
----------, *ss:*

John Menis and Dorothy Menis, and each of them, being first duly sworn deposes and say: That they are the father and mother respectively, who signed the foregoing consent to adoption and have read and know the contents thereof and they, and each of them, signed the same as their free acts and deed and fully understand the legal consequences thereof.

JOHN MENIS, *Father.*
DOROTHY MENIS, *Mother.*

Subscribed and sworn to before me this ------ day of ----------, 1955.

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(Official Title)

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2166) should be enacted.

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84TH CONGRESS, 1st Session | SENATE | Calendar No. 1225 | REPORT No. 1210

NICHOLAS JOHN BELTSOS

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2130]

The Committee on the Judiciary, to which was referred the bill (S. 2130) for the relief of Nicholas John Beltsos, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Nicholas John Beltsos. The bill provides for an appropriate quota deduction and for the payment of the required visa fee.

STATEMENT OF FACTS

The beneficiary of the bill is a 29-year-old native and citizen of Greece who last entered the United States at New York, N. Y., on October 3, 1950, when he was admitted as a student under the provisions of section 4 (e) of the Immigration Act of May 26, 1924. He attended Marquette University from June 1951 through the summer session of 1954 where he obtained a bachelor of science degree in business administration. The beneficiary presently resides in Lansing, Mich., with a sister who is in the United States as a student. He has been accepted for postgraduate work by the Michigan State College and he intends to commence his studies in September 1955.

A letter, with attached memorandum, dated July 26, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of the Immigration and Naturalization Service with reference to the bill reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
OFFICE OF THE COMMISSIONER,
Washington 25, D. C., July 26, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2130) for the relief of Nicholas John Beltsos, there is attached a memorandum of information concerning the beneficiary, which was prepared from the Immigration and Naturalization Service files relating to the beneficiary.

The bill would grant this alien the status of a permanent resident of the United States upon payment of the required visa fee. It also directs that one number be deducted from the appropriate immigration quota for the first year that such quota is available.

The beneficiary is chargeable to the quota of Greece.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE NICHOLAS JOHN BELTSOS, BENEFICIARY OF S. 2130

Nicholas John Beltsos, a native and citizen of Greece, was born on February 26, 1926, at Vizikion, Greece. He last entered the United States at New York, N. Y., on October 3, 1950, as a student under the provisions of section 4 (e) of the Immigration Act of May 26, 1924, as amended. He has had several extensions, the last of which was to expire on August 14, 1955.

Mr. Beltsos attended Marquette University from June 1951 through the summer session of 1954, where he obtained a bachelor of science degree in business administration. He has stated that he has been accepted for postgraduate work by the Michigan State College and that he intends to commence his studies in September 1955.

Mr. Beltsos, who is single, is currently employed by the Howard Saber Co., 2400 St. Joseph Street, Lansing, Mich., as an invoice clerk at a salary of $275 per month. He has stated that he has no assets and when unemployed is dependent on his uncle, Niketas D. Beltsos, of 226 East Wisconsin Avenue, Milwaukee, Wis., for his support.

Mr. Beltsos' father, mother, brother, and 1 of his 2 sisters reside in Greece. He currently resides at 804 West Allegan Street, Lansing, Mich., with another sister, who he has stated is also in the United States as a student. He has advised the Detroit, Mich., office of this Service that he does not intend to return to Milwaukee, Wis., but will make his home in Lansing, Mich., where he will attend school.

Senator Alexander Wiley, the author of the bill, has submitted the following letter in connection with the case:

THE LONDON HAT SHOP & SHOE REPAIRING CO.,
Milwaukee, Wis., March 23, 1955.

Re Nicholas John Beltsos, 769 North Jefferson Street, or 226 East Wisconsin Avenue, Milwaukee 2, Wis.

Senator ALEXANDER WILEY,
2122 Massachusetts Avenue NW., Apartment 637,
Washington, D. C.

DEAR SENATOR WILEY: Following my conversation with you while you were in our store some time ago regarding my nephew, Nicholas John Beltsos, I am writing to you about it, as you asked me to do, and I do hope you will be able to do something for me.

He is my brother's son, I brought him here under the student visa and put him through Marquette University where he completed his course in the college of business administration with a bachelor of science degree. I feel that as long as we educated him here, there is no reason why we should not take advantage of his education in this country instead of sending him back to Greece where the opportunities are limited. I do not know what procedure you will follow but I do hope it will be possible to keep him here. If you need any additional information or if you wish me to send you his passport, I will comply with your request.

I hope you will be able to help me, if it is at all possible, to keep the boy here on the preference list of the Greek quota. You will have my utmost gratitude and appreciation.

With kindest regards to you and Mrs. Wiley, I am

Sincerely yours,

NICKETAS D. BELTSOS.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2130) should be enacted.

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Calendar No. 1226

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1211

RAYMONDE ROUXEL WILLIAMS

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1423]

The Committee on the Judiciary, to which was referred the bill (H. R. 1423) for the relief of Raymonde Rouxel Williams, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to waive the excluding provision of existing law relating to one who has been convicted of a crime involving moral turpitude in behalf of the wife of a United States citizen.

STATEMENT OF FACTS

The beneficiary of the bill is a 29-year-old native and citizen of France who was married in France on December 9, 1950, to Harold Louis Williams, a United States citizen and member of our Armed Forces. The record discloses that the beneficiary was convicted on May 9, 1947, of conspiring to commit an abortion and without the waiver provided for in the bill, the beneficiary will be unable to accompany her husband to the United States.

A letter, with attached memorandum, dated August 3, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to H. R. 7942, which was a bill introduced in the 83d Congress for the relief of the same beneficiary, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., August 3, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington 25, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 7942) for the relief of Raymonde Rouxel Williams, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Norfolk, Va., office, which has custody of those files.

The bill would waive the provisions of section 212 (a) (9) of the Immigration and Nationality Act which exclude from admission to the United States aliens who have been convicted, or admit the commission, of a crime involving moral turpitude. The bill further provides that the exemption shall apply only to a ground for exclusion of which the Department of State or the Department of Justice has knowledge.

As the wife of a United States citizen, Mrs. Williams is entitled to nonquota status in the issuance of an immigrant visa.

Sincerely,

J. M. SWING, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES CONCERNING RAYMONDE ROUXEL WILLIAMS, BENEFICIARY OF H. R. 7942

Raymonde Rouxel Williams was born October 10, 1925, at Saint Diser, Lisieux, France. The beneficiary was married to United States citizen, Harold Louis Williams, December 9, 1950, at Caqualnvilliers, Calvados, France. Mr. Williams is presently serving in the Army branch of the Armed Forces of the United States.

The sponsor, Harold Louis Williams, was born at West Union, S. C., on January 19, 1920. He has served in the Army since May 6, 1937. His total annual income is $2,279.12. His present address is 7867th QM, Depot GP, care of Postmaster, New York, N. Y., APO 216.

As both the beneficiary and her husband are residing abroad, it is suggested that the committee communicate with the Department of State for information concerning the nature of any criminal record in the case of Mrs. Williams.

The Director of the Visa Office, Department of State, submitted the following report dated March 3, 1954, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, D. C., March 3, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

MY DEAR MR. REED: Reference is made to your letter of February 19, 1954, and its enclosures, wherein you request a report of the facts in the case of Mrs. Raymonde Rouxel Williams, beneficiary of H. R. 7942, 83d Congress, 2d session.

The Department has on file a communication from the American Embassy at Paris which reports that on May 9, 1947, Mrs. Williams was convicted by the court of first instance at Paris of a crime comparable to the crime of conspiring to commit an abortion, as that term is defined in the United States, in violation of article 317 of the French Penal Code.

The crime of conspiring to commit an abortion has been held to involve moral turpitude within the meaning of section 3 of the act of February 5, 1917, as amended, and is also considered to involve moral turpitude within the meaning of section 212 (a) (9) of the Immigration and Nationality Act, which repealed the act of February 5, 1917 and certain other immigration laws. The section last cited renders ineligible to receive visas and excludable from the United States aliens who have been convicted of, or admit having committed, a crime involving moral turpitude. As a consequence, the responsible consular officer would have no choice under the law but to continue to withhold the issuance of an immigrant visa to Mrs. Williams.

At this time the Department has no knowledge of any factor in Mrs. Williams' case, other than the information hereinbefore cited, which would render her ineligible to receive an immigrant visa. However, it should be borne in mind that any other ground of ineligibility which may come to light prior to visa issuance would preclude Mrs. Williams from receiving a visa.

Sincerely yours,

EDWARD S. MANEY,
Director, Visa Office
(For the Acting Secretary of State).

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 1423) should be enacted.

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Calendar No. 1227

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1212

RICHARD RAFFO HANSON

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3275]

The Committee on the Judiciary, to which was referred the bill (H. R. 3275) for the relief of Richard Raffo Hanson, having considered the same, reports favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to enable a former native-born United States citizen to regain his United States citizenship which was lost by service in the Danish Air Force.

STATEMENT OF FACTS

The beneficiary of the bill was born in Washington, D. C., on September 1, 1933. The father of the beneficiary of the bill was killed in line of duty in August 1942, while serving in Alaska with the United States Navy. The beneficary joined the United States Army at the age of 17 in November 1950 and was discharged in April 1951, because of age and unadaptability. During 1951 and 1952, he worked on merchant ships. Through an acquaintance with an employee of the Embassy of Denmark, he made arrangments to go into the Danish Air Force and became a member of that Service on May 7, 1953. When advised by the American Embassy that he had lost his United States citizenship, he resigned from the Danish Air Force and returned to the United States as a nonquota immigrant as the child of a United States citizen on December 12, 1953.

A letter, with attached memorandum, dated May 20, 1955, to the chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to the case reads as follows:

MAY 20, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 3275) for the relief of Richard Raffo Hanson, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the Washington, D. C., field office of this Service, which has custody of those files.

The bill would provide that the beneficiary, who lost United States citizenship by serving in the armed forces of a foreign state, may be naturalized by taking prior to 1 year after the effective date of the act, before any court, the oaths prescribed by law.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE RICHARD RAFFO HANSON, BENEFICIARY OF H. R. 3275

The beneficiary, Richard Raffo Hanson, formerly a citizen of the United States was born in Washington, D. C., on September 1, 1933. He lost his United States citizenship by serving in the Danish Air Force from May 5, 1953, to October 10, 1953. The beneficiary returned to the United States on December 12, 1953, and was admitted as the child of a United States citizen.

Mr. Hanson is presently unemployed. He has an offer of employment at the Smithsonian Institute. He owns a 1947 Crosley automobile valued at $100 and has a bank account of $100.

The beneficiary is unmarried and has no one dependent upon him for support. He presently resides with his mother at 4615 Langdrum Lane, Chevy Chase, Md. He has 3 brothers and 1 sister, all citizens of the United States.

The director of the Passport Office, Department of State, submitted the following report dated March 23, 1955, to the Committee on the Judiciary of the House of Representatives:

DEPARTMENT OF STATE,
Washington, D. C, March 23, 1955.

Re H. R. 3275, for the relief of Richard Raffo Hanson.

Hon. EMANUEL CELLER,
Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Your letter of March 3, 1955, addressed to the Director of the Vias Office, in the matter of H. R. 3275, for the relief of Richard Raffo Hanson has been referred to this Office.

The files of the Passport Office disclose that Richard Raffo Hanson was born at Washington, D. C., on September 1, 1933, that he left the United States on April 10, 1953, and that he lost United States nationality on May 6, 1953, under section 349 (a) (3) of the Immigration and Nationality Act by entering the Air Force of Denmark on that date. He was discharged from the Danish Air Force upon completion of his basic training and subsequently applied for and received a nonquota visa to enter the United States as the alien child of a United States citizen.

The instant bill would restore to Mr. Hanson the status of a native-born United States citizen, upon his taking the prescribed oath.

In view of all of the circumstances in this case, the Department recommends enactment of H. R. 3275.

Sincerely yours,

R. B. SHIPLEY,
Director, Passport Office.

Congressman DeWitt Hyde, the author of the bill, appeared before a subcommittee of the Committee on the Judiciary of the House of Representatives and testified in support of the bill, as follows:

The father of Richard Raffo Hanson, Comdr. Malcolm Parker Hanson, was killed in the line of duty in August 1942, while he was in Alaska with the United States Navy setting up radar installations on one of the Aleutian Islands. Richard was 9 years old at the time and, of course, very much upset about the death of his father. With five children in the family, Mrs. Hanson found it very difficult financially to get along and Richard was required to help out in every way he could. With the thought of relieving his mother of certain financial responsibilities, he joined the United States Army at the age of 17 in November 1950. He was discharged in April 1951 because of his age and unadaptability. After that, during the years of 1951 and 1952, he worked on merchant marine ships making whatever he could to take care of himself. Through an acquaintance with an employee of the Embassy of Denmark, he made arrangements to go into the Air Force at Denmark and sailed on a merchant ship to Denmark at the end of April in 1953. He went to the Air Force officials in Denmark and although he took no oath of office and signed no papers, he became a member of the Danish Air Force on May 7, 1953. When the American Embassy found out, they advised him that he had lost his citizenship and that he should return to the United States before he reached the age of 21. He resigned from the Danish Air Force and came back to the United States, port of entry at Philadelphia, Pa. on a nonquota status section 101 (a) (27), registration No. A8599086. He arrived in Philadelphia December 12, 1953.

Richard is now gainfully employed and is making preparations to go to college and complete his education. All of the children are very intelligent and two members of the family have worked their way through college and are now well established.

DEWITT S. HYDE.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 3275) should be enacted.

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84TH CONGRESS } SENATE { REPORT
1st Session } { No. 1213

Calendar No. 1228

BRIGITTA POBERETSKI

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1255]

The Committee on the Judiciary, to which was referred the bill (S. 1255) for the relief of Brigitta Poberetski, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

AMENDMENT

Strike all after the enacting clause and insert in lieu thereof the following:

That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, the minor child, Brigitta Poberetski, shall be held and considered to be the natural-born alien child of Mr. and Mrs. Hugo Wendt, citizens of the United States.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant to the minor child to be adopted by citizens of the United States the status of a nonquota immigrant which is the status normally enjoyed by alien minor children of United States citizens.

STATEMENT OF FACTS

The beneficiary of the bill is a 17-year-old native and citizen of Latvia who entered the United States with her younger sister on September 30, 1946, as a war orphan from a displaced person's camp in Germany. The two children were placed in the home of Mr. and Mrs. Hugo Wendt and some years later, the real mother of the beneficiary, who was presumed to be dead, traced her daughters through the American Red Cross and asked that her older child, the beneficiary,

be returned to her. Meanwhile, the mother had remarried and was living in Australia. When Brigitta returned to her mother she found that her mother spoke only German or Latvian, whereas Brigitta had forgotten those languages and spoke only English. This was indicative of many other ways in which the mother and daughter had grown apart during the years of absence. The mother had two other children by her new husband and Brigitta longed to be in America with her sister and her foster parents. The Wendts plan to legally adopt both of the girls and have the consent of the mother.

A letter, with attached memorandum, dated July 7, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill reads as follows:

UNITED STATES DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington 25, D. C., July 7, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 1255) for the relief of Brigitta Poberetski, there is attached a memorandum of information concerning the beneficiary. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiary by the St. Paul, Minn., office of this Service, which has custody of those files.

The bill provides that the beneficiary shall be considered to have been lawfully admitted to the United States for permanent residence as of the date of its enactment, upon payment of the required visa fee. It further provides for the deduction of one quota number from the appropriate quota for the first year that such quota is available.

The bill apparently is intended to provide for the issuance of an immigrant visa to the beneficiary, notwithstanding the quota limitations of the Immigration and Nationality Act. However, it is drawn in a form that is usually used for beneficiaries who are residing in the United States.

The beneficiary is chargeable to the quota of Latvia.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE BRIGITTA POBERETSKI, BENEFICIARY OF S. 1255

The beneficiary, Brigitta Poberetski, also known as Brigitta Wendt, a native and citizen of Latvia, was born on March 11, 1938. She has never married and resides at 8 Glass Street, Essendon W. 5, Victoria, Australia. She is employed as an office worker but information as to her assets and income is not available.

Miss Poberetski completed elementary school. Her mother and stepfather reside in Australia. A sister resides at Wahpeton, N. Dak. Her father has been missing since 1946.

The beneficiary, with her younger sister, entered the United States as a war orphan from a displaced person's camp in Germany on September 30, 1946. She was placed in the home of Mr. and Mrs. Hugo Wendt, Wahpeton, N. Dak. Shortly thereafter, her mother, who had remarried, was located in the British Zone of Germany and steps were taken to have her mother and stepfather enter the United States as immigrants. Instead, they immigrated to Australia where the beneficiary joined them in May 1951.

Mr. Hugo Wendt, the sponsor, has stated that the beneficiary desires to return to the United States and has been unable to do so because of quota limitations. Mr. and Mrs. Wendt are adopting the younger sister and desire to adopt the beneficiary if she is permitted to return to the United States. They have stated that permission for the beneficiary to be adopted has been granted.

Mr. and Mrs. Wendt are naturalized citizens of the United States. They have no children. Their assets consist of a farm valued at $72,000, equipment valued at $10,000, and cash in amount of $800.

Senator William Langer, the author of the bill, has submitted a number of letters and documents in support of the bill, among which are the following:

SCHENECTADY, N. Y., *April 5, 1955.*

Re Brigitta Poberetzki, Windsor, Melbourne, Victoria, Australia, and Hugo and Hannah Wendt, Wahpeton, N. Dak.

Senator W. LANGER,
United States Senate, Washington, D. C.

INTRODUCTION

DEAR SIR: I am sending you a social worker's report on the child, Brigitta Poberetzki, on behalf of Mr. and Mrs. Wendt, who are anxious to secure permission for Brigitta's reentry into the United States. I have outlined the facts of the case below, and would like to ask for a reconsideration of the matter, if you are able to arrange it with the State Department.

I am myself an American citizen, who resided for 7 years in Australia. I did my undergraduate work at Wayne University, Detroit, and studied social work at Melbourne University. For some time, I was employed by the Australian Immigration Department to do social work with new migrants, and it was in that capacity that I first came to know Brigitta. More recently I have been attached to the Clinic for Psychotherapy, Melbourne, as a psychiatric social worker. I returned to the United States last month.

Following are the relevant details of Brigitta's case:

EARLY HISTORY

Brigitta was born on March 11, 1938, in Riga Latvia. Shortly after the birth of a younger sister, Ingrid, Brigitta's father deserted the family. In 1944, as a result of war action, the mother and two daughters were forced to abandon their home and fled to Germany. The mother was placed in factory work in Berlin and left the children in the care of a German couple. When she was not heard from further, she was presumed dead, and the girls were placed in an orphanage. Here, for the duration of the war, they lived on very meager rations. When located by UNRRA, they were half starved, covered with lice, and had no papers to identify them. They were first placed in an UNRRA children's camp, and plans were made for their migration to the United States of America through the joint operation of IRO and the Lutheran World Federation.

STAY IN AMERICA

On September 30, 1946, Brigitta and Ingrid were flown to New York. In lieu of a passport, they had affidavits, subscribed by the American vice consul in Stuttgart, Germany, as authorized by the Presidential directive of 1945 regarding war refugees. For a few days, they stayed at the Lutheran Orphanage at Fargo, N. Dak., but were shortly assigned to the care of Mr. and Mrs. Hugo Wendt, wealthy German-American farmers, now living in Phoenix.

In the meantime, the real mother had traced her children through International Red Cross. She soon began to agitate for the return of Brigitta; since Ingrid did not remember her mother, the mother did not ask for her custody as well. The mother had since remarried and had migrated to Australia. As a consequence of her insistence, the Wendts surrendered custody of Brigitta; and, through the services of IRO she was brought to Australia aboard the SS. *Pioneer Reef*. She landed in Sydney on June 18, 1951. Her travel documents were notarized affidavits and medical statements. Since it was believed that she would be joining her mother permanently, no American reentry permit had been requested.

STAY IN AUSTRALIA

Brigitta was met in Sydney by the IRO port liaison officer and flown to Somers Holding Center in Victoria, where she saw her mother for the first time in 7 years. This holding center, which was fairly similar to European DP camps in nature, had been established by the Australian Government to house migrants and their families until private accommodation and employment could be found for them. It was in sharp contrast to the comfort and ease of Brigitta's farm home with the Wendts. Later on, the family (consisting of Brigitta, mother, new husband, and 2 children by her second marriage) moved to Melbourne where they lived in

2 small rooms in a crowded slum area. The family provider was only an unskilled laborer and better housing could not be found for them at a rental which they could afford.

Further complications soon arose: Brigitta and her mother had grown apart in the ensuing years. Brigitta could speak only English and her mother only Latvian and German. Brigitta missed her sister in America and was homesick for the Wendts and her old friends. The mother tried to impose her tastes in food, clothing, and behavior on Brigitta, who had grown up in a much freer American atmosphere. Tension between the two of them soon mounted to the breaking point. The social workers connected with the Australian Immigration Department made strenuous attempts to reconcile the family, including weekly separate casework interviews with mother and daughter, attempts to secure new friends for Brigitta through clubs, etc., attempts to help the family circumstances in such matters as housing, medical care, and the like.

In June 1952 the relationship became so strained that the mother begged the social worker to place her daughter in an orphanage, and Brigitta pleaded to be removed from her mother's care. As a temporary expedient, Brigitta was placed in a foster home, pending consideration of what more could be done to alleviate the situation. During this time, the mother disappeared and was not found for 6 months. After she was located, she refused to support Brigitta in any way, nor would she readmit her to her home.

VISA DETAILS

On December 17, 1951, Brigitta applied to the American consulate, Melbourne, for a visa to return to America, under the Latvian quota. Mr. and Mrs. Wendt have filed with this consulate a notarized affidavit of support. They have further agreed to pay her passage back to the States, and Brigitta's mother has consented to her return.

However, the American consulate has stated that, under the provisions of the new immigration act, it is unlikely that Brigitta will ever be granted a visa, since she has no near relative who is an American citizen. (Mr. and Mrs. Wendt had not adopted her because Brigitta's mother had agitated for her return; and her sister Ingrid is only 12 years old.)

PRESENT SITUATION

Brigitta's plight is rather serious in the following respects:

1. She has just turned 17, and is far too old to be admitted to an orphanage or to be adopted.
2. However, the salary she is earning as a young girl is far too small to support her in even the most meager way.
3. She is growing rapidly and in consequence the expenses for sufficient clothing are considerable.
4. As a result, the social worker has had to enlist the support of many different persons and institutions to procure enough money to see that Brigitta is able to survive.
5. Since the social worker (myself) has now left Australia, Brigitta's problem becomes even more acute.

Despite all her troubles, however, it can be frankly and truthfully stated that Brigitta has developed great self-reliance, and her moral behavior has never been questioned. She has attended night school and is employed as a junior typist-switchboard operator for a firm of carriers; her employers think well of her. She is in good health, is attractive, and quite intelligent, and will eventually be a good citizen in whatever country she lives. But it is obvious that it is unnatural for such a young girl to live alone, without a family, since she still needs a mother's advice and supervision, and the atmosphere of familial living.

Although the Australian Immigration Department has not taken an official stand in the matter, I have been assured that it would grant Brigitta an international identity card as a travel document.

SUMMARY

In view of Brigitta's predicaments, and considering that these difficulties would be remedied if she were to return to the Wendts, and since Brigitta has once already been admitted to the United States of America on permanent basis, would it be possible for you to help her and the Wendts to obtain an immediate visa for her on compassionate grounds?

Yours faithfully,

Mrs. Jane Kamm.

THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,
AMERICAN CONSULATE,
Melbourne, Australia, October 28, 1954.

Hon. WILLIAM LANGER,
United States Senate.

MY DEAR SENATOR LANGER: The consulate has received your letter dated September 13, 1954, in which you request information regarding the immigration visa case of Miss Brigitta Poberetski.

Miss Poberetski made application for registration on the quota waiting list at this office on December 22, 1951, and is chargeable to the nonpreference portion of the Latvian quota, which is at present very heavily oversubscribed.

The Immigration and Nationality Act of 1952 provides, inter alia, that an immigrant who is the brother or sister of an American citizen shall be entitled to a preference. It is suggested that if Brigitta's sister, who resides with her foster parents, Mr. and Mrs. Hugo Wendt of Wahpeton, N. Dak., is an American citizen she approach the office of the district director of the Immigration and Naturalization Service at Chicago, Ill., and file a petition on her behalf. It is believed that there is no age limit for an American citizen petitioning for a brother or sister. However, the fourth preference portion of the Latvian quota is also oversubscribed, but should the situation improve this preference would increase her chances of an earlier consideration being given to her case. There is enclosed a general information sheet regarding immigrant visas that you may find useful.

Your interest in this case has been noted and you may rest assured that we will inform Miss Poberetski promptly when we are in a position to give further consideration to her application for an immigration visa.

Sincerely yours,

GIVON PARSONS, *American Consul.*

WAHPETON, N. DAK., *January 22, 1955.*

Hon. WILLIAM LANGER,
United States Senator of North Dakota,
Washington, D. C.

DEAR SIR: Thank you very much for your effort in behalf of our foster daughter, Brigitta Poberetski, in Australia.

Of course, we can't help being a little disappointed with the results as we put so much faith and hope in you, to help us in getting her back to America.

Just before I wrote to you, I talked with my good friend, Mrs. Georg Iste. She said: "If there is anybody who can help you, it is Senator Langer."

We know all about the regulations and quotas of the different countries; we have been immigrants ourselves about 30 years ago, but this case is just a little bit different.

After all, Brigitta has been with us already 5 years, but when her mother wanted her back, she wanted to go there, after all she remembered her mother, but she did not think about all the changes that had taken place in the 5 years she had been with us. She was pigheaded, for everybody told her, not to go, but she was only a child who did not care about laws or take them seriously.

So please, Senator, if there is any chance at all, that all this could be taken in consideration please help us, but if not, we still hold you in high regard and owe you a debt of gratitude.

Thanking you very much,
Yours sincerely,

MRS. HUGO WENDT.

THE LUTHERAN WELFARE SOCIETY OF NORTH DAKOTA,
Fargo, N. Dak., May 17, 1954.

Mrs. HUGO WENDT,
Wahpeton, N. Dak.

DEAR MRS. WENDT: I spoke to Mr. Melbourne of the Immigration and Naturalization Service the other day. I briefly told him of the situation, that is, about Brigitta's coming to the United States and then going to Australia to join her mother, and now wishing to return to the United States to live with you and her sister. Mr. Melbourne explained that when she first came to the United States she came as a displaced person from a distressed area and this gave her a special privilege to come. However, when she left the United States, she lost

her special status. She did it willfully we know, and yet she was but a child and could not see the results of such a choice. Because she chose to leave, she lost that special displaced person's right to be in the United States, and now she must come under the established quota of the country of her birth. You understand that Australia is not a distress area and therefore she cannot again come as a displaced person.

Mr. Melbourne stated that Brigitta would have to go to the American consul and apply for a visa. I believe she has already done this. Then he said you could send her a letter showing that you are interested in her and will help her financially so she does not become a public charge here. She would be able to present this to the American consul. This, too, I believe you have done through your affidavit of support.

The Latvian quota fills up very quickly, I understand, and only persons having a preferred status are admitted under the quota. A preferred status refers to having relatives here who are citizens of the United States, such as mothers, fathers, sons, or daughters. Another preferred category are those spouses of immigrants already in the United States who intend to permanently settle here.

He said that the fact that Ingrid, her sister, is here did not help much to give her a preferred status; the relationship had to be closer. Of course Ingrid is not yet a citizen either.

I guess the Latvian quota is small and fills up fast. Mr. Melbourne did not give me any encouragement that Brigitta could come back soon. He said the laws were set up that way and we must operate under them. Some special congressional act could, of course, make it possible for her to come. However, he could not do anything about that, and we as an agency cannot do anything either. If you feel there are other things you can do, you may feel free to do so.

The situation is difficult, and maybe nothing can be done. It is too bad for Brigitta since she is so unhappy there. I hope that you can explain to Ingrid that you are doing everything you can, but there are some things you just cannot do. If Brigitta cannot now get a visa from the American consul, she just can't and everyone will have to wait. Ingrid can perhaps understand that there are laws that govern immigration and you personally cannot alter that. It would have been nice if someone could have foretold Brigitta's unhappiness in Australia and then prevented her from going.

It would be good to have Ingrid's adoption settled. Do you still maintain North Dakota residence, or are you establishing yourself in Arizona? This will make a difference as to who handles it.

We will be pleased to hear from you again. I am sorry we cannot do anything specific to help Brigitta.

Sincerely,

Mrs. Carol Lindsay, *Caseworker.*

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 1255), as amended, should be enacted.

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Calendar No. 1231

84TH CONGRESS, 1st Session } SENATE { REPORT No. 1216

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CERTAIN KOREAN WAR ORPHANS

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 2312]

The Committee on the Judiciary, to which was referred the bill (S. 2312) for the relief of certain Korean war orphans, having considered the same, reports favorably thereon with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

AMENDMENT

Strike all after the enacting clause and insert in lieu thereof the following:

That, for the purposes of sections 101 (a) (27) (A) and 205 of the Immigration and Nationality Act, Joseph Han Holt, Mary Chae Holt, Helen Chan Holt, Paul Kim Holt, Betty Rhee Holt and Nathanial Chae Holt shall be held and considered to be the natural-born alien children of Harry and Bertha Holt, citizens of the United States.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to grant to the children to be adopted by citizens of the United States the status of nonquota immigrants which is the status normally enjoyed by the alien minor children of United States citizens. The bill has been amended to insert the names of the children.

STATEMENT OF FACTS

The beneficiaries of the bill are 6 minor children, all natives and citizens of Korea, ranging in age from 6 months to 3 years. They are to be adopted by Mr. and Mrs. Harry Holt, who are United States citizens. Mr. and Mrs. Holt are also adopting two other minor Korean children who will receive visas under the provisions of the Refugee Relief Act. The beneficiaries of the bill are not eligible to receive visas under that

act inasmuch as the act limits the number of children to be adopted by 1 family to 2. Mr. and Mrs. Holt also have 6 natural-born children. The adoptive parents are financially able to provide for the beneficiaries and Mr. Holt is presently in Korea making arrangements to bring the children to this country.

A letter, with attached memorandum, dated July 27, 1955, to the chairman of the Senate Committee on the Judiciary from the Commissioner of Immigration and Naturalization with reference to the bill, reads as follows:

DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, D. C., July 27, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Committee on the Judiciary,
United States Senate, Washington, D. C.

DEAR SENATOR: In response to your request for a report relative to the bill (S. 2312) for the relief of certain Korean war orphans, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the Portland, Oreg. office of this Service, which has custody of those files.

The bill would confer nonquota status upon the six minor Korean war orphans to be adopted by Harry and Bertha Holt pursuant to section 101 (a) (27) (A) and 205 of the Immigration and Nationality Act by providing that the beneficiaries shall be considered the natural-born alien children of Mr. and Mrs. Harry Holt, citizens of the United States.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES CONCERNING CERTAIN KOREAN WAR ORPHANS, BENEFICIARIES OF S. 2312

Information concerning the beneficiaries was obtained from Mrs. Bertha Holt, one of the sponsors.

The beneficiaries, Robert Holt, age 3; Christine, Mary, and Joseph Holt, ages 2; and Paul and Betty Holt, ages 6 months; are Korean war orphans living in an orphanage at Seoul, Korea. They are the illegitimate children of Korean mothers and American soldiers, all natives and citizens of Korea. Their names at birth and the dates and places of their births are unknown. Mr. and Mrs. Harry Holt, the sponsors, are in the process of adopting the beneficiaries together with two other Korean war orphans. They are bringing the latter two to the United States under the provisions of the Refugee Relief Act of 1953.

The sponsors are natives and citizens of the United States, living at Creswell, Oreg. Mr. Holt is a retired lumberman with an income of approximately $20,000 per year. He and his wife own the Cresswell Lumber Co. and 5 farms, totaling 353 acres, together with other real estate. They have assets amounting to approximately $410,000. Mr. and Mrs. Holt have 6 children of their own, ranging in age from 9 to 22 years. Mr. Holt is now in Seoul, Korea, for the purpose of adopting the beneficiaries and awaiting the enactment of legislation to provide for their entry to the United States. The sponsors are supporting the children in Korea.

The six Korean orphans are also the beneficiaries of H. R. 7043 pending in the House of Representatives.

Senator Richard Neuberger, the author of the bill, submitted the following cable from the adoptive father of the beneficiaries, which sets forth the correct spelling of the beneficiaries' names:

SEOUL, *July 5, 1955.*

Senator RICHARD NEUBERGER,
Washington, D. C.

Following are names of Holt adopted babies: Christine Kim Holt, Robert Chae Holt, Joseph Han Holt, Mary Chae Holt, Helen Chan Holt, Paul Kim Holt, Betty Rhee Holt, Nathanael Chae Holt.

HARRY HOLT.

Senator Neuberger wrote to the chairman of the Senate Judiciary Committee on July 5, 1955, with reference to the bill, as follows:

UNITED STATES SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
July 5, 1955.

Hon. HARLEY M. KILGORE,
Chairman, Senate Judiciary Committee,
United States Senate, Washington, D. C.

DEAR HARLEY: I received today from Mr. Harry Holt the names of the Korean war orphans he is adopting and desires to bring to the United States under the provisions of Senate bill S. 2312. The names of the children are: Joseph Han Holt, Mary Chae Holt, Helen Chan Holt, Paul Kim Holt, Betty Rhee Holt, and Nathanael Chae Holt.

Mr. Holt of Creswell, Oreg., is now in Korea making the necessary arrangements to bring the children to the United States.

The Refugee Relief Act provides that no more than two special nonquota immigrant visas may be issued to eligible orphans adopted by United States citizens. Adopted children of American citizens are entitled to fourth preference status within the quota. At this time the Korean fourth preference quota is heavily oversubscribed, resulting in over a 2-year wait. The purpose of this legislation is to allow Mr. and Mrs. Holt to bring, upon enactment, six Korean war orphans to the United States, in addition to the two orphans permitted under the Refugee Relief Act.

I have received more than 80 letters from friends and neighbors of the Holts urging favorable action and endorsing the Holts' fine spirit. After careful investigation of the facts, I believe the Holts are well prepared to provide a wholesome Christian home in Oregon for these homeless Korean war orphans.

Mr. Holt is now in Korea awaiting the enactment of the legislation to bring his adopted Korean war orphans to the United States. Therefore, I hope that your committee can give early favorable consideration to this humanitarian endeavor and thus expedite this enabling legislation.

I would be most happy to supply personally any additional information for the committee's consideration of the bill.

With best wishes, I am,

Sincerely,

RICHARD L. NEUBERGER.

In addition, Senator Neuberger submitted the following letters in support of the bill:

SEOUL, KOREA, *June 30, 1955.*

Hon. RICHARD L. NEUBERGER,
United States Senate, Washington, D. C.

DEAR SENATOR: I wish to thank you for your letter of June 15, and also for the letter to Mrs. Collier. I certainly thank you for your interest in this matter, and greatly appreciate the interest of Senator Morse.

I am sorry that I did not make myself clear to you at first. The only way these children can be helped is at once; next year may be too late.

I understand that Congress has to do things in an orderly manner, but in a case like this, perhaps an exception might be made. At one time my father had a little business matter that called for a special enabling act and it was put through at once, the same as personal damage suits and other small matters. I am told that there are many things of this kind put through at every session.

I am sending you the names and pictures of the little ones that I am adopting, hoping that by your having them, you will be able to ask that an exception be made in their case; it might save their lives. I am sure that Congress would be more than willing to help these little children of American fathers if they knew the facts. These little ones do not thrive well here because they do not have the resistance to parasites and disease that full-blooded Koreans have. Also, the seem to need a different diet than Korean children get along on, and do not thrive too well in Korean orphanages. There are several hundreds of these mixed-blood children here, many of them black.

Senator, I do not believe you will ever regret helping these little children. "Inasmuch as ye have done it unto one of the least of these my brethern, ye have done it unto Me."

If you can help them get into Oregon, I will send you pictures of them from time to time and even bring them to see you if you would like me to do so.

With grateful thanks for your help in this urgent matter,

Very truly yours,

HARRY HOLT.

WORLD VISION, INC.,
Seoul, Korea, June 30, 1955.

Hon. RICHARD L. NEUBERGER,
United States Senate, Washington, D. C.

DEAR SENATOR: Mr. Harry Holt has been a guest in our house since June 3. The mission on which he has come to Korea is indeed a most worthy and humanitarian one. We, who are in orphanage work in this country of Korea, appreciate more than we can put into words the help he is being to us in trying to deal with the problem of mixed-blood (or GI) children. They simply are not accepted into Korean society and do not thrive well under the same conditions in our orphanages that pure-blooded Korean orphans do.

The enclosed pictures of the children he has selected, have all passed physicals and proceedings for their passports are being started. He has been looking after these children during processing, under deplorable conditions in a hospital; he has just been offered the use of a missionary's home until the end of August. It will be ideal as long as it lasts, but due to the time limit, we trust you will do all it is humanly possible to do to get the enabling act passed so that he can start for the States with the children before the end of August without having to make a move with them—to where we do not know—as housing is a major problem here in Korea.

We all appreciate your interest in this splendid effort of his, and wish you every success in having the enabling act passed before Congress adjourns for the summer.

Respectfully yours,

ERWIN W. RAETZ,
Overseas Director.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (S. 2312), as amended, should be enacted.

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84TH CONGRESS, 1st Session | SENATE | REPORT No. 1217

Calendar No. 1232

LEONG DING FOON QUON AND KEN C. QUON

JULY 28, 1955.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 1496]

The Committee on the Judiciary, to which was referred the bill (H. R. 1496) for the relief of Leong Ding Foon Quon and Ken C. Quon, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

AMENDMENTS

1. On line 4, strike the following: "and Ken C. Quon".
2. Amend the title to read:

A bill for the relief of Leong Ding Foon Quon.

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to provide for the readmission to the United States for permanent residence of a former resident of the United States and the mother of four United States citizen children. The bill has been amended to delete the name of the minor alien beneficiary inasmuch as his case can be worked out under the provisions of the Refugee Relief Act.

STATEMENT OF FACTS

The beneficiary of the bill is a 34-year-old native and citizen of China. On May 10, 1939, she was married to Quon Hong Kuey, a lawfully resident alien. She was admitted to the United States on May 19, 1939, as a nonimmigrant alien. Four children were born in this country, all of whom are citizens. In 1946, the beneficiary's husband returned to China for the purpose of establishing an export business and in January 1947, the beneficiary joined him. The bene-

ficiary's husband returned to the United States and was admitted for permanent residence on November 22, 1951, as a lawful resident alien returning to an unrelinquished domicile in the United States. The beneficiary has been unable to obtain a visa to rejoin her husband in this country.

A letter, with attached memorandum, dated June 24, 1954, to the then chairman of the Committee on the Judiciary of the House of Representatives from the Commissioner of Immigration and Naturalization with reference to H. R. 8617, which was a similar bill introduced in the 83d Congress, reads as follows:

JUNE 24, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: In response to your request of the Department of Justice for a report relative to the bill (H. R. 8617) for the relief of Leong Ding Foom Quon and Ken C. Quon, there is attached a memorandum of information concerning the beneficiaries. This memorandum has been prepared from the Immigration and Naturalization Service files relating to the beneficiaries by the Los Angeles, Calif., office of this Service which has custody of those files.

The bill is intended to confer nonquota status upon the aliens pursuant to section 101 (a) (27) (B) of the Immigration and Nationality Act, by providing that they shall be considered returning resident aliens.

As quota immigrants both aliens would be chargeable to the quota for Chinese.

Sincerely,

———— ————, *Commissioner.*

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE LEONG DING FOON QUON AND KEN C. QUON, BENEFICIARIES OF H. R. 8617

Both beneficiaries are native citizens of China and are residing abroad. Mr. Quon Hong Kuey (also known as Frank Quon), Quon Hong Qui, and Quon Sung Lip, who is the husband and father, respectively, of the beneficiaries has furnished the following information:

Leong Ding Foon Quon, a native citizen of China, was born on August 16, 1921, at Soon Duck Dai, Kwangtung, China. On May 10, 1939, she married Quon Hong Kuey at Hong Kong, China, and was admitted to the United States on May 19, 1939, as a nonimmigrant alien for duration of the exempt merchant status established by her husband. The couple proceeded to Laguna Beach, Calif., where the husband, Quon Hong Kuey resumed the operation of a Chinese import retail store which he had owned for 5 years. In Laguna Beach four children were born of that union, all of whom are United States citizens.

In 1946 Quon Hong Kuey returned to China for the purpose of establishing an export business. In January 1947 he was joined in Canton, China, by his wife, the alien Leong Ding Foon Quon and their four minor children. Prior to departure, Leong Ding Foon Quon applied for a reentry permit to the United States. The application was denied for the reason that she had no lawful permanent residence to which she was entitled to return. On March 2, 1948, the alien Ken C. Quon was born in Canton, China, the son of the aliens, Leong Ding Foon Quon and Quon Hong Kuey. After the fall of the Chinese Nationalist Government the family moved to Hong Kong, China, where Quon Hong Kuey obtained an immigrant visa to the United States for himself as a lawful resident alien returning to an unrelinquished domicile in the United States. On November 22, 1951, he was admitted to the United States for permanent residence and was accompanied by his 10-year-old United States citizen son. The other members of the family, consisting of the aliens Leong Ding Foon Quon and Ken C. Quon, and the three other children moved to Macau where they still reside. The beneficiaries of this legislation have made application for immigrant visas to the United States consulate at Hong Kong, China, and visa petitions on their behalf have been approved by this Service.

The sponsor of this bill, Quon Hong Kuey, also an alien of the Chinese race, is 59 years of age and first entered the United States on August 7, 1907, to join his father in San Diego. He was admitted as a nonimmigrant alien for duration of the exempt merchant status established by his father, Quon Leong, in about

1890. He attended school for 4 years in China and for 6 years in San Diego, Calif. He has continuously participated in the operation of a family-owned Chinese importing firm in California. The firm, Quon Mane Co., succeeded by Quon-Quon Co., now operates an importing warehouse in Los Angeles, Calif., and has four retail stores located in San Diego, Laguna Beach, Beverly Hills, and Pasadena, Calif. Quon Hong Kuey is a general partner in the firm of Quon-Quon Co., is the resident manager of the Pasadena store, and has an annual net income from all sources of about $13,000. His total net worth is about $75,000 in the form of capital investments and shares of Quon-Quon Co., all in California. Both of his parents are deceased and he has one older brother, Albert T. Quon, who is a naturalized citizen of the United States. Quon Hong Kuey was married to Ng Shee in 1913 in Hoiping, China, and two sons were born in China of that marriage. Ng Shee died in China in 1939 and the two sons died there in 1942. No documentary evidence of the marriage or subsequent deaths have been presented.

The sponsor, Quon Hong Kuey, is the sole source of support of the beneficiaries as well as the other four children.

The Director of the Visa Office, Department of State, submitted the following report dated May 6, 1954, to the Committee on the Judiciary of the House of Representatives:

MAY 6, 1954.

Hon. CHAUNCEY W. REED,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. REED: Reference is made to your letter of April 5, 1954, and its enclosures, wherein you request a report of the facts in the cases of Leong Ding Foon Quon and Ken C. Quon, beneficiaries of H. R. 8617, 83d Congress, 2d session.

According to a communication received from the American consulate general at Hong Kong, Mrs. Quon and her son, Ken, are registered on the waiting list for the Chinese racial quota with priority as of April 23, 1953. They are entitled to third preference quota status as the wife and minor child of an alien lawfully admitted into the United States for permanent residence, Mr. Quon Hong Kuey. Present indications are, however, that the two prospective immigrants must anticipate a protracted period of waiting before third-preference numbers from the very heavily oversubscribed Chinese racial quota will become available for their use.

At this time, the Department has no information from which it can be ascertained whether Mrs. Quon and her son would be otherwise eligible to receive immigrant visas under the immigration laws and regulations.

Sincerely yours,

EDWARD S. MANEY,
Director, Visa Office
(For the Acting Secretary of State).

Congressman James B. Utt, the author of the bill, appeared before a subcommittee of the Committee on the Judiciary of the House of Representatives and submitted the following summary of facts in the case:

Quon Hong Kuey, also known as Frank Quon, came to United States in 1907 at age 12 years; resided in San Diego, Calif. Admitted prior to 1924 for permanent residence.

Moved to Laguna Beach, Calif., in 1937 and started a business called the Jade Tree; at that time was married to Ng Shee (date of marriage, October 20, 1913).

Went to China on business, November 21, 1938; wife died there on January 16, 1939.

Married Leong Ding Foon (present wife) on May 10, 1939. Brought present wife to United States on June 11, 1939, landing at San Pedro. She was issued certificate of identity No. 79332 on June 16, 1939 (file No. 14036/329–B).

Members of Episcopal Church in Laguna Beach, Rotary Club, and active in civic affairs. Had 4 children, all born in Santa Ana, Calif.

January 30, 1946, he was issued a permit to reenter the United States by Department of Justice, Immigration and Naturalization Service at Philadelphia, Pa. (permit No. 1400808 (Los Angeles) application No. A–3725813).

Went to China on business June 13, 1946 (Rotary made him honorary member at this time). Wife and four children followed him March 7, 1947. Fifth child born in Canton March 2, 1948.

Had to flee to Macau in 1950 where wife and four children are still living.

November 22, 1951, Frank and son Donald returned to United States but could not bring infant son so wife and three daughters stayed. Have been separated since that time.

Have literally hundreds of signatures on petitions recommending him, as well as many letters of recommendation from prominent businessmen of Laguna Beach.

He applied for citizenship but it will be November 1956 before the 5 years are up.

Visa petitions have been approved for third preference as of September 15, 1953. Will be years before action can be taken.

Mr. Quon and family have a net worth exceeding $60,000, with an annual income of better than $8,000.

The committee, after consideration of all the facts in the case, is of the opinion that the bill (H. R. 1496), as amended, should be enacted.

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Calendar No. 1239

84TH CONGRESS, 1st Session | SENATE | REPORT No. 1224

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AUG 9 1955
LAW LIBRARY

PROVIDING FOR THE CONVEYANCE OF A TRACT OF LAND IN ORANGE COUNTY, N. Y., TO THE VILLAGE OF HIGHLAND FALLS, N. Y.

JULY 28, 1955.—Ordered to be printed

Mr. STENNIS, from the Committee on Armed Services, submitted the following

REPORT

[To accompany H. R. 1459]

The Committee on Armed Services, to whom was referred the bill (H. R. 1459) to provide for the conveyance of a tract of land in Orange County, N. Y., to the village of Highland Falls, N. Y., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to authorize and direct the Secretary of the Army to convey to the village of Highland Falls, N. Y., without monetary consideration, approximately 6.4 acres of land, on the condition that the land shall be used by the village as a trash dump or incinerator and related purposes.

BACKGROUND INFORMATION

Title to the land described in the bill was acquired by the United States in 1943 through a condemnation proceeding in which the sum of $1,000 was determined to be just compensation for the taking. The land, which was owned by the Cragston Development Co., is located along U. S. Route 9W and is a part of an area totaling nearly 12,000 acres acquired during the period 1938–45 for the expansion of the West Point Military Reservation.

It has been determined that the retention of this tract of land is not essential to the training mission which prompted the expansion of the reservation in this area, and that the 6.4 acres are excess to the needs of the Department of Defense. The village of Highland Falls, on the other hand, has a requirement for a tract of land of approximately this size and location for the disposition of trash and the performance of related functions. This property, some of which is low and marshy, is considered by village authorities to be suitable for this purpose.

RESERVATION AND RESTRICTIONS

The bill provides that the property must be used by the village of Highland Falls as a trash dump or incinerator, or for purposes related thereto, and that if it should cease to be so used title to the land shall revert to the United States. The Secretary of the Army is authorized to include in the deed of conveyance such additional terms and conditions as he determines to be necessary to protect the interests of the United States.

ABSENCE OF CONSIDERATION

The land that is the subject of this bill is authorized to be donated to the city of Highland Falls, N. Y. In approving this bill, the committee has considered the provisions of section 203 (k) of the Federal Property and Administrative Services Act of 1949, as amended, which authorize a public benefit allowance of up to 100 percent in the transfer of property for public health use. Since it appears that the transfer could be accomplished administratively without charge to the city, the committee believes that the authorization for transfer without monetary consideration to the Government is not in conflict with committee and congressional policy regarding the monetary consideration to be required in legislative conveyances of surplus property.

COST DATA

Enactment of this bill will not involve the expenditure of any Federal funds.

DEPARTMENTAL RECOMMENDATION

Attached hereto and made a part of this report is a letter from the Secretary of the Army to the chairman of the House Armed Services Committee indicating that the Department of the Army on behalf of the Department of Defense has no objection to enactment of this bill in the form in which it has been amended by the House.

This letter indicates that the Bureau of the Budget is opposed to enactment of this bill since it is said to be unnecessary because section 203 (k) of the Federal Property and Administrative Services Act of 1949 authorizes transfer of property and refuse disposal (on the basis of a health facility).

Representative St. George, who introduced this bill in the House, appeared before the committee and advised she has subsequently received indication that the Bureau of the Budget does not oppose the enactment of this bill, but merely desired to point out that its purpose could be accomplished administratively without legislation. The property is nevertheless made the subject of legislation in order to expedite its availability to the city.

DEPARTMENT OF THE ARMY,
Washington, D. C., May 27, 1955.

Hon. CARL VINSON,
Chairman, Committee on Armed Services,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 1459, 84th Congress, a bill to provide for the conveyance of a tract of land in Orange County, N. Y., to the village of Highland Falls, N. Y. The Secretary of Defense has delegated to the Department of the Army the responsibility for expressing the views of the Department of Defense thereon.

The Department of the Army on behalf of the Department of Defense interposes no objection to the enactment of H. R. 1459 provided it is amended in the manner outlined in this report.

The purpose of this measure is to authorize and direct the Secretary of the Army to convey to the village of Highland Falls, N. Y., all of the right, title, and interest of the United States in and to a tract of land in the town of Highlands, Orange County, N. Y., containing approximately 6.4 acres, more particularly described in the bill, on the condition that the land shall be used by the village only as a trash dump or incinerator and related purposes, and that its use shall be in such manner as will not interfere with the use of property of the Federal Government located in the vicinity

Title to the land described in the bill was acquired by the United States in 1943 through a condemnation proceeding in which the sum of $1,000 was determined to be just compensation for the taking. The land, which was owned by the Cragston Development Co., is located along U. S. Route 9W and is a part of an area totaling nearly 12,000 acres acquired during the period 1938–45 for the expansion of the West Point Military Reservation.

It has been determined that the retention of this tract of land is not essential to the training mission which prompted the expansion of the reservation in this area and that the 6.4 acres are excess to the needs of the Department of Defense. The village of Highland Falls, on the other hand, has a requirement for a tract of land of approximately this size and location for the disposition of trash and the performance of related functions. This property, some of which is low and marshy, is considered by village authorities to be suitable for this purpose.

In order to eliminate an apparent inconsistency between paragraphs (a) and (b) of section 2 and to protect adequately the interest of the United States, it is recommended that section 2 be deleted and that the following provisions be substituted therefor:

"SEC. 2 (a) The conveyance authorized in the first section of this act shall be made upon condition that in the event that the land shall be used by the village of Highland Falls at any time for any purpose other than as a trash dump or incinerator (or for purposes relating thereto), all right, title, and interest in and to said land shall revert to the United States.

"(b) The deed of conveyance shall contain such other terms, conditions, and reservations as the Secretary of the Army determines to be necessary to protect the interest of the United States."

Inasmuch as the Federal Property and Administrative Services Act of 1949 (67 Stat. 884) as amended contains authority for disposition of surplus property determined by the Secretary of Health, Education, and Welfare, to be suitable for use for public health purposes, under certain terms and conditions more particularly set forth in the act and regulations published by the General Services Administration, the committee may wish to obtain an expression of views of the General Services Administration as to the adequacy of existing laws and regulations governing the disposition of surplus property to achieve substantially the objectives of the bill, thus making its enactment unnecessary.

The enactment of this measure into law will not involve the expenditure of any Department of Defense funds.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

Bureau of the Budget advises that while there is no objection to the submission of this report, it opposes the enactment of H. R. 1459 as unnecessary because, if the parcel of land in question is determined to be surplus to the needs of the Federal Government its administrative transfer for refuse disposal (on the basis of a health facility) can be sought under section 203 (k) of the Federal Property and Administrative Services Act of 1949 and regulations issued under that section by the Department of Health, Education, and Welfare.

Sincerely yours,

ROBERT T. STEVENS,
Secretary of the Army.

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